

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 and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No. 37/2021

Shanakiya Ragul Rajaputhran Rasamanikkam,
301, Main Street, Kalawanchikudy.

PETITIONER

Vs.

1. Ceylon Petroleum Corporation.
2. W.W.D.Sumith Wijesinghe,
Chairman.
3. Buddhika Ruwan Madihahewa,
Managing Director.
4. R.M.D.K. Ratnayake
5. Tharindu Hashan Eknendagedara
6. Chaminda Hettiarachchi
7. Buddhika Iddamalgoda
8. Thilanga Nadeera Polwatte

2nd - 8th Respondents are members of the Board of Directors of the Ceylon Petroleum Corporation.

9. S.W. Gamage,
Deputy General Manager.

1st - 9th Respondents are at,
No. 609, Dr Danister De Silva Mawatha,
Colombo 9.

10. Hon. Upali Abeyratne,
Chairman.

11. Hon. Daya Chandrasiri Jayatillake

12. Chandra Fernando

10th – 12th Respondents are members of
The Presidential Commission of Inquiry,
C/O Presidential Secretariat, Colombo 1.

13. Samarakoon Mudiyanseelage Chaminda
Prasad Samarakoon,
20A/1, Pilawala, Gunnepana,
Kandy.

14. Udaya Gammanpila,
Minister of Energy,
No. 80, Sir Ernest De Silva Mawatha,
Colombo 7.

RESPONDENTS

Before: Arjuna Obeyesekere, J / President of the Court of Appeal
Mayadunne Corea, J

Counsel: Nigel Hatch, P.C., with Shantha Jayawardena, Chaminda
Nanayakkarawasam and Ms. Siroshni Illangage for the Petitioner

Parinda Ranasinghe, P.C., Additional Solicitor General with Ms.
Avanti Weerakoon, State Counsel for the 1st – 8th Respondents

Manohara De Silva, P.C., with Mohamed Adamaly and Boopathi
Kahathuduwa for the 13th Respondent

Supported on: 1st March 2021 and 17th March 2021

Written Submissions: Tendered on behalf of the Petitioner and the 1st – 8th Respondents
on 31st March 2021

Tendered on behalf of the 13th Respondent on 6th April 2021

Decided on: 3rd June 2021

Arjuna Obeyesekere, J., P/CA

The Petitioner is a Member of Parliament, having been elected in August 2020 from the Batticaloa District. The Petitioner states that his family held a fuel dealership from the 1950's, first under Shell Corporation and later with the 1st Respondent, the Ceylon Petroleum Corporation, under the name Rasamanikkam & Sons at Kalawanchikudi. The Petitioner states further that his father had appointed T. Vadivel as the Manager of the said fuel filling station, and that after the death of Vadivel, his son, Prasanthan had been appointed as the Manager.

The Petitioner states that by a letter dated 20th November 2012 signed by the 13th Respondent, who at that time was the Marketing Manager (Retail) of the 1st Respondent, an explanation is said to have been called from the partners of Rasamanikkam & Sons as to why the above fuel dealership is managed by a third party. The Petitioner states that this letter was never received by his father or any of the other partners of Rasamanikkam & Sons. By a further letter dated 21st December 2012, the 13th Respondent had informed the partners of Rasamanikkam & Sons that the dealership had been terminated. The Petitioner states that on the same day, 21st December 2012, the 13th Respondent had issued a letter to Prasanthan, appointing him as the dealer of the above mentioned fuel station at Kalawanchikudy. Although the Petitioner claims that his family was aggrieved by the above decisions of the 13th Respondent, for which the approval of the Board of Directors of the 1st Respondent does not appear to have been obtained, the fact remains that the partners of Rasamanikkam & Sons did not challenge the said termination of the dealership in a Court of law.

The Petitioner states that in March 2015, the 13th Respondent was transferred from the Head Office to the Sapugaskanda Terminal of the 1st Respondent on disciplinary grounds, and was placed under interdiction soon thereafter. During the period August 2015 – May 2016, the 1st Respondent had served five charge sheets on the 13th Respondent, including a charge sheet relating to the termination of the above fuel dealership. After a disciplinary inquiry, the services of the 13th Respondent had been terminated on 29th December 2016. Aggrieved by the said termination of his services, the 13th Respondent had filed an application in the Labour Tribunal, Colombo challenging the validity of such termination of services.

In the meantime, acting in terms of Section 2 of the Commissions of Inquiry Act No. 17 of 1948, as amended, H.E. the President had appointed the 10th – 12th Respondents as Commissioners of a Presidential Commission of Inquiry (PCOI) to *inquire into and obtain information in respect of the alleged political victimization during the period commencing 8th January 2015 and ending on 19th November 2019 and in particular*, by the Commission to investigate allegations of Bribery and Corruption, the Financial Investigations Division and the Special Investigation Division of the Sri Lanka Police. The warrant issued under the hand of the Secretary to H.E. the President in relation to the above appointment has been published in Extraordinary Gazette No. 2157/44 dated 9th January 2020 marked 'P1'. By a further Order published in Extraordinary Gazette No. 2159/16 dated 22nd January 2020 marked 'P2', the Criminal Investigation Department has been added to the list of institutions referred to in 'P1'.

It is admitted that the 13th Respondent had lodged complaint No. 317/2020 dated 12th February 2020 with the PCOI. The Petitioner states that a news item appeared in the *Dinamina* newspaper of 30th October 2020 of the 13th Respondent stating in his evidence to the PCOI that his services were terminated due to political reasons. The Petitioner states further that the report of the PCOI had been handed over to H.E. the President on 8th December 2020, and that *he has become aware that the 10th – 12th Respondents have purportedly determined that the 13th Respondent's dismissal by the 1st Respondent is a political victimization and therefore has decided by way of its recommendation that the 13th Respondent shall be reinstated in service.*¹

The learned President's Counsel for the Petitioner submitted that the mandate of the PCOI is limited to inquiring into the affairs of the agencies specified in 'P1' and 'P2' and that jurisdiction of the PCOI does not extend to inquiring into internal disciplinary proceedings in the Public Service or in Statutory Bodies. He therefore submitted that any decision made by the members of the PCOI to reinstate the 13th Respondent is in excess of its jurisdiction, and is a nullity, and that any decision by the 1st Respondent to reinstate the 13th Respondent based on such illegal findings would also be a nullity.

¹ Vide paragraph 20 of the petition.

It is in the above circumstances that the Petitioner filed this application on 25th January 2021, seeking *inter alia* the following relief:

- a) Call for and examine *inter alia* the decision, determination or recommendation made by the PCOI in respect of the 13th Respondent;
- b) A Writ of Certiorari to quash the decision, determination or recommendation made by the PCOI in respect of the 13th Respondent;
- c) A Writ of Certiorari to quash the decision, determination or recommendation made by the PCOI recommending the reinstatement of the 13th Respondent;
- d) A Writ of Certiorari to quash the decision, **if any** made by the 1st – 8th Respondents pursuant to the said decision, determination or recommendation made by the PCOI in favour of the 13th Respondent;²
- e) A Writ of Certiorari to quash the decision, **if any** made by the 1st – 8th Respondents pursuant to the said decision, determination or recommendation made by the PCOI reinstating the 13th Respondent;
- f) A Writ of Certiorari to quash the letter, **if any** issued to the 13th Respondent by the 1st – 8th Respondents reinstating the 13th Respondent pursuant to the said decision, determination or recommendation made by the PCOI;
- g) A Writ of Certiorari to quash the proceedings/order/settlement **if any** made or entered into by/before the Labour Tribunal reinstating the 13th Respondent based on the said decision, determination or recommendation made by the PCOI;
- h) A Writ of Certiorari to quash the direction **if any** made by the 14th Respondent directing the 1st – 8th Respondents to reinstate the 13th Respondent;³

² The 2nd Respondent is the Managing Director, and the 3rd – 8th Respondents are the directors of the 1st Respondent.

³ The 14th Respondent is the Minister of Energy.

- i) A Writ of Prohibition prohibiting the 1st – 8th Respondents from implementing and/or reinstating the 13th Respondent based on the said decision, determination or recommendation made by the PCOI.

The learned Additional Solicitor General for the 1st Respondent and the learned President's Counsel for the 13th Respondent raised several preliminary objections relating to the maintainability of this application. It was their position that the Petitioner has a personal animosity with the 13th Respondent over the cancellation of the petroleum dealership of his family, and that this application is tainted with malice. It was therefore submitted that the Petitioner has not invoked the discretionary jurisdiction of this Court with clean hands.

It was also submitted on behalf of all Respondents that the cornerstone of this application are the purported findings of the PCOI in respect of the 13th Respondent. This position is clear from the aforementioned relief sought by the Petitioner, which are based almost entirely on the purported existence of the findings of the PCOI relating to the reinstatement of the 13th Respondent. It was however submitted by the learned President's Counsel for the 13th Respondent that not only has the Petitioner failed to produce the decision of the PCOI in favour of the 13th Respondent, the Petitioner has also failed to produce before this Court an iota of evidence that suggests that the PCOI has made a decision in favour of the 13th Respondent. It is in this background that the learned President's Counsel for the 13th Respondent submitted that this is not a case where even formal notice should be issued on the Respondents.

In his counter affidavit, the Petitioner has stated that he has submitted two requests for information, and has produced a letter dated 10th February 2021 marked 'P25' issued by the Information Officer of the 1st Respondent. The Petitioner however has not tendered to this Court the letter by which the information sought was requested. Hence, this Court does not know what information has been sought from the 1st Respondent. The Petitioner has also produced a letter dated 8th February 2021 marked 'P26' issued by the Information Officer at the Presidential Secretariat by which a request for information made by the Petitioner in January 2020 has been refused. Here too, the letter by which the information was sought has not been produced.

The factual position therefore is that this Court does not know at this moment of time whether the PCOI has made a recommendation in respect of the 13th Respondent. As I have already observed, the Petitioner only states that '***I have become aware that the 10th – 12th Respondents have purportedly determined that the 13th Respondent's dismissal by the 1st Respondent is a political victimization and therefore has decided by way of its recommendation that the 13th Respondent shall be reinstated in service.***' The above averment of the Petitioner has two reservations, and it is clear that the Petitioner himself is not certain if the PCOI has made a determination in favour of the 13th Respondent. The same uncertainty applies to almost all the relief prayed for, as is evident by the use of the words, 'if any'.

I am of the view that the decision that is being impugned in this application must be produced by the Petitioner, thereby affording the Respondents an opportunity of setting out their case. The decision must also be available for this Court to examine, as this Court is exercising a discretionary jurisdiction conferred by Article 140 of the Constitution and a petitioner is not entitled to any relief as of right. This position has been clearly laid down in **Weerasooriya v. The Chairman, National Housing Development Authority and Others**,⁴ where Sripavan, J (as he was then) held that the Court will not set aside a document unless it is specifically pleaded and identified in express language in the prayer to the petition.

The learned President's Counsel for the Petitioner submitted that the Petitioner has in fact moved in paragraph (b) of his prayer that this Court call for the record of the PCOI and examine its proceedings, and for that reason, the objection of the learned President's Counsel for the 13th Respondent has no merit. While it is correct that the Petitioner has moved that this Court call for the relevant material from the PCOI, in view of the vagueness and uncertainty as to whether the PCOI has made any findings at all, the Petitioner cannot expect this Court to engage in a fact finding exercise for the Petitioner. In the above circumstances, I am of the view that the Petitioner cannot proceed with this application in its present form.

The learned Additional Solicitor General for the 1st Respondent admitted that the Board of Directors of the 1st Respondent has taken a decision to reinstate the 13th

⁴ CA (Writ) Application No. 866/98; CA Minutes of 8th March 2004; followed in *Hatton National Bank PLC vs Commissioner General of Labour and Others*. [CA (Writ) Application No. 457/2011; CA Minutes of 31st January 2020; per Janak De Silva, J]

Respondent, and that it is within the powers of the Board to do so. He submitted further that the said decision has been taken independent of any findings of the PCOI and that in any event, the 1st Respondent is not in receipt of any communication, recommendation or directive from the PCOI regarding the reinstatement of the 13th Respondent. This submission of the learned Additional Solicitor General goes to the root of the Petitioner's case, and if correct, would mean that the application of the Petitioner is misconceived.

The learned Additional Solicitor General submitted that by a letter dated 3rd January 2020 marked '**13R1**', the 13th Respondent had requested the 2nd Respondent, the Chairman of the 1st Respondent to consider reinstating him in service for the reasons set out in the said letter. Thereafter, the 2nd Respondent, by letter dated 6th February 2020 marked '**X4**', had appointed a retired Judge of the High Court to reconsider the disciplinary action taken against the 13th Respondent. By his report dated 24th February 2020 marked '**13R2**', the retired Judge of the High Court had recommended that the 13th Respondent be reinstated in service.

In the meantime, the 13th Respondent had lodged a complaint with the three member Political Victimisation Committee chaired by the then State Minister of Irrigation and Regional Development. Having considered the complaint of the 13th Respondent, by his letter dated 29th May 2020, the Chairman of the said Committee Mahinda Yapa Abeywardena had recommended that the Petitioner be reinstated in service.

It is evident from the proceedings before the Labour Tribunal that by August 2020, discussions were ongoing between the 1st and 13th Respondents relating to his reinstatement – vide proceedings of 27th August 2020, marked '**13R3a**' and proceedings of 21st September 2020, marked '**13R3b**'. The 13th Respondent had thereafter by letter dated 15th October 2020 marked '**P18**' written to the 14th Respondent, the Minister of Energy, once again seeking reinstatement. Although this letter had been referred to the 1st Respondent, it was the position of the learned Additional Solicitor General that the 1st Respondent did not act on the said letter.

Reinstatement of the 13th Respondent which had been recommended by the above Committee as well as by '**13R2**' had thereafter been considered by the Board of the 1st Respondent on three occasions, namely:

- (a) In November 2020, as borne out by the Board Paper dated 24th November 2020 marked 'X1';
- (b) In December 2020, as borne out by the Board Paper dated 22nd December 2020 marked 'X3'; and
- (c) In January 2021, as borne out by the Board Paper dated 27th January 2021, marked 'X2'.

The decision to reinstate the 13th Respondent had been taken by the Board of the 1st Respondent on 27th January 2021 – vide 'P23'.

It is clear from the above sequence of events that parallel to the complaint of the 13th Respondent to the PCOI, the 1st Respondent had considered the appeal made by the 13th Respondent seeking reinstatement in service. Thus, even if the PCOI has recommended the reinstatement of the 13th Respondent, which is yet to be conveyed to the 1st Respondent, it is clear that the decision of the 1st Respondent to reinstate the 13th Respondent has been taken independent of the inquiry and/or any recommendation by the PCOI. I am therefore in agreement with the submission of the learned Additional Solicitor General, and take the view that the application of the Petitioner is misconceived.

Taking into consideration all of the above facts, I see no legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed, without costs.

President of the Court of Appeal

Mayadunne Corea, J

I agree

Judge of the Court of Appeal