

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
Mandamus under Article 140 of the
Constitution*

K.H. Kapila Kumara
No: 94/5A,
Sri Perukum Mawatha,
Walpola, Ragama.

PETITIONER

CA WRIT APPLICATION 348/2020

1. Hon. Namal Rajapaksa,
The Minister of Sports,
The Ministry of Sports,
No: 09, Philip Gunewardena Mawatha,
Colombo 09.
2. Mr Anuradha Wijekoon,
The Secretary,
The Ministry of Sports,
No: 09, Philip Gunewardena Mawatha,
Colombo 09.
3. Mr Amal Edirisooriya,
The Director-General
Department of Sports Development,
The Ministry of Sports,
No: 09, Philip Gunewardena Mawatha,
Colombo 09.

4. Mr Kath Siri Fernando,
The Ex-President
Sri Lanka Body Building and Fitness
Federation,
No:33, Torrington Place,
Colombo 07.
And
No: 60/1, Alawattahena,
Anguruwathota.
5. Hon. Attorney General
The Attorney General's Department,
Hulftsdrop,
Colombo 12

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J. &
K. K. A. V. SWARNADHIPATHI, J.**

Counsel: Rasika Dissanayaka with Shabbeer Huzain for the Petitioner

Sumathi Dharmawardena (P.C) (A.S.G), with Sehan Soyza
for the 1st – 3rd and 5th Respondents

Argument: By Written Submission

Order on: 27.10.2021

K.K.A.V. SWARNADHIPATHI, J

ORDER

The Petitioner had filed this application for writs in the nature of certiorari mandamus and prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

At the outset, a preliminary objection was raised regarding the maintainability of this application without nominating the necessary parties. In the petition dated 18th of September 2020, the Petitioner had marked two documents P9 and P18. The Minister of Sports appointed a three-member committee to inquire into allegations levelled against eleven persons, including the Petitioner. After an inquiry, the committee had submitted its report to the then Minister of Sports. P9 is the letter that informed the Petitioner of imposing a lifetime ban preventing the Petitioner from participating, representing and/or engaging in any activity of the Sri Lanka Body Building and Fitness Federation and/or being appointed for any post thereof. After appeals and representations by the Petitioner, the Minister of sports ordered to withdraw all charges levelled against the Petitioner.

This order was communicated to the Petitioner by letter dated 24.06.2019, which is marked as P15. After one year from the discharge date, the Petitioner was informed by a letter dated 02.07.2020 marked as P18 signed by the 3rd Respondent stating that the lifetime ban against the Petitioner would be in operation. Petitioner contended that P18 was issued on the advice of the 5th Respondent. Under powers of the Minister of Sports in terms of Law No 25 of 1973 as amended from time to time. In giving his opinion, the 5th Respondent had ignored the power vested in the Minister under section 41 of the Act.

Therefore, Petitioner believes that the decision was taken by the 1st - 5th Respondents has no legal basis and/or the Respondent has acted over their authority. Such decisions are against principles of natural justice and a violation of the provisions of Sports Law No 25 of 1973 and its amendments. In the petition, he had pleaded a writ of certiorari quashing the purported decisions of 1st - 4th Respondents and their predecessors preventing the Petitioner from participating, representing and/or being appointed for any post.

Petitioner further pleads for a writ of certiorari quashing the decisions taken by 1st - 5th Respondents and/or their predecessors in office to impose a lifetime ban against the Petitioner

as reflected in the letter marked as P18. A writ of certiorari to quash the opinion given by the 5th Respondent, which is reflected in the letter marked P20. To grant a writ of mandamus compelling 1st-5th Respondents to withdraw the punishments imposed against the Petitioner by documents marked as P9 and/or P18. A writ of prohibition preventing the 1st - 5th Respondents and/or their subordinate officers from taking any further actions regarding decisions contained in documents P9 and/or P18 for an interim order restraining 1st - 4th Respondents and their officers taking any further action based on decisions described above until the final determination of this application.

1st – 3rd and the 5th Respondents appearing before this court took up a preliminary objection. The Respondents objection was that the Petitioner had failed to name the three members of the panel who found the Petitioner guilty of the charges. The second objection was that, in any event, the application of the Petitioner is futile.

In respect of the first objection, regarding the necessary parties, the Respondents cite *Rawaya Publishers and others Vs Wijedasa Rajapaksa Chairman Sri Lanka Press Council and Others*¹ In the above case, the Respondents directed the Petitioner to apologise to the complainant, the Secretary-General of Janatha Vimukthi Peramuna. A preliminary objection was raised stating that the complainant in whose favour the order sought to be made has not been made a party to the application. It was held that "in the context of writ applications, a necessary party is one without which no order can be effectively made. The order of the press council is in his favour. The Petitioner cannot proceed with an application keeping the original complaint out of the proceedings. It was held that "In the context of writ applications, a necessary party is one without whom no order can be effectively made. The order of the press council is in his favour. The Petitioner cannot be permitted to proceed with an application keeping the original complainant out of proceedings." This case, as well as all the cases cited, has no bearing on his case. In the present case, the Petitioner does not challenge the findings of the panel's decision, which found him guilty. What he challenges is that the punishment is too severe and is against the law.

¹ (2001) 3 SLR 213.

In this case, he challenged what happened after the decision of the three-member committee. Having an inquiry and sending the findings to the person who appointed the committee ends with the findings; therefore, those members are not necessary parties. In considering document P8, which is the report of the three-member committee that held the inquiry, finding the Petitioner guilty on six counts out of the nine charges does not speak of the punishment.

I believe those three members are not necessary parties to hear and dispose of this case, as for the objection regarding futility. The Respondents contend that the Petitioner cannot proceed without first getting the finding, making him guilty removed. In this case, the petitioner states that imposing a lifetime ban is wrong and against the law. He does not for a moment challenge the decision of making him a guilty party. What he challenges is the punishment.

In my view, any party who feels the punishment supersedes the crime or is too severer has the right to come before the court.

Therefore, I reject the preliminary objections taken by the 1st-3rd and 5th Respondents.

Judge of the Court of Appeal

M. T. MOHAMMED LAFFAR, J.

I agree.

Judge of the Court of Appeal