

**In the Court of Appeal of the Democratic Socialist Republic of Sri Lanka**

**C. A. Appeal No:  
CA/PHC/169/2016**

**High Court of Kurunegala  
Case No: HCW/17/2013**

**In the matter of an Appeal in terms of Articles 154 P and 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with section 2 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 (as amended) and section 331 of the Code of Criminal Procedure Act, No. 15 of 1979**

S.A. Sunil Jayathilake  
No. 75, "Jayarama"  
Ambakolaweva,  
Ambanpola

**Petitioner**

**Vs.**

1. Co-operative Employees Commission
2. The Chairman  
Co-operative Employees Commission
3. The Secretary  
Co-operative Employees Commission  
  
all of No. 73, Malkaduwawa,  
South Circular Road,  
Kurunegala
4. Multi Service Co-operative Limited of Mahawa
5. The General Manager  
Multi Service Co-operative Limited of Mahawa
6. The Chairman  
Multi Service Co-operative Limited of Mahawa

**Respondents**

**And between**

1. Multi Service Co-operative Limited of Mahawa
2. The General Manager  
Multi Service Co-operative Limited of Mahawa
3. The Chairman  
Multi Service Co-operative Limited of Mahawa

**4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondent-Petitioners**

**Vs.**

1. Co-operative Employees Commission
2. Champika Lisitha Kumara,  
The Chairman,  
Co-operative Employees Commission
3. Dhaham Rajapaksha,  
Member,  
Co-operative Employees Commission
4. Peshala Herath,  
Member,  
Co-operative Employees Commission

All of  
New Office Complex, 2<sup>nd</sup> Floor,  
Provincial Council of Wayamba,  
Kurunegala

**Respondent-Accused**

**And now between**

1. Multi Service Co-operative Limited of Mahawa
2. The General Manager  
Multi Service Co-operative Limited of Mahawa
3. Chairman  
Multi Service Co-operative Limited of Mahawa

**4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondent-Petitioner-Appellants**

**Vs.**

1. Co-operative Employees Commission
2. Champika Lisitha Kumara,  
The Chairman,  
Co-operative Employees Commission
3. Dhaham Rajapaksha,  
Member,  
Co-operative Employees Commission
4. Peshala Herath,  
Member,  
Co-operative Employees Commission

all of  
New Office Complex, 2<sup>nd</sup> Floor,  
Provincial Council of Wayamba,  
Kurunegala

**Respondent-Accused-Respondents**

**Before:** Prasantha De Silva, J.  
S.U.B. Karalliyadde, J.

**Counsel:** Ms. Nihara Gooneratne for the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondent-Petitioner-Appellants  
Mr. Rohana Deshapriya with C. Liyanage for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> Respondent- Accused-Respondents  
Mr. Kalinga Indatissa, P.C. with Nimanka Jayawickrama and Geethanjali Tennakoon for the 4<sup>th</sup> Respondent-Accused-Respondent

**Written Submissions tendered:**

on 23.06.2020. by the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Respondent-Accused-Respondents

on 01.07.2020. by the 4<sup>th</sup> Respondent-Accused-Respondent

on 12.10.2020. by the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondent-Petitioner-Appellants

**Argued:** on 16.03.2021.

**Decided:** on 01.02.2022

**S.U.B. Karalliyadde, J.**

By this Appeal, the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondent-Petitioner-Appellants (hereinafter referred to as the 1<sup>st</sup> to 3<sup>rd</sup> Appellants) seek to set aside the Order dated 27.10.2016 of the learned High Court Judge of Kurunegala. By that Order the learned High Court Judge has discharged the 1<sup>st</sup> to 4<sup>th</sup> Respondent-Accused-Respondents (hereinafter referred to as the 1<sup>st</sup> to 4<sup>th</sup> Respondents) from a charge of contempt of Court. The charge was based on the fact that the Respondents have attempted to compel the Appellants to implement the decision dated 21.12.2011 of the 1<sup>st</sup> Respondent (marked as ෧෧-16) which the High Court has held in the Writ Application bearing No. HCW-17/2013 is against the law and ultra-vires. The Writ Application has been filed by one Sunil Jayathilake who was not a party to the contempt of Court proceedings. He is an employee of the 1<sup>st</sup> Appellant, the Multi Services Co-operative Limited of Mahawa and he had applied for a promotion to a managerial post in the Co-operative Limited. After

considering the applications of the employees, the Co-operative Limited has decided to promote some other employee for the particular post. Then Sunil Jayathilake appealed against that decision to the 1<sup>st</sup> Respondent, the Co-operative Employees Commission. The Co-operative Employees Commission, by its decision dated 21.12.2011 (marked as 03-16) concluded that Sunil Jayathilake is the eligible person for the post and he should be promoted to the post. Nevertheless, the Appellants did not accept that decision of the Co-operative Employees Commission on the basis that the Co-operative Employees Commission is not vested with powers to decide about the promotions of its employees and the Co-operative Employees Commission has powers only to lay down the criteria of selection of employees for the promotions and further, that the power of selection of employees for promotions is vested with the Co-operative Limited. Since the Co-operative Limited did not implement the decision of the Co-operative Employees Commission marked as 03-16, Sunil Jayatilake has filed a Writ Application bearing No. HCW-17/2013 before the High Court of Kurunegala seeking to implement that decision. On 17.11.2015 the learned High Court Judge has dismissed the Writ Application on the basis that the decision of the Co-operative Employees Commission is not legally valid and is ultra-vires.

After the dismissal of the Writ Application, Sunil Jayathilake has made another Application to the Co-operative Employees Commission regarding his promotion. Consequent to that Application, the Co-operative Employees Commission has written a letter marked as 03-1 (at page 83 of the Appeal Brief) directing the Co-operative Limited to implement its decision marked as 03-16. Then the Co-operative Limited has filed contempt papers in the High Court in Writ Application bearing No. HCW-17/2013 against the 1<sup>st</sup> to 4<sup>th</sup> Respondents alleging that they have attempted to compel the 1<sup>st</sup> to 3<sup>rd</sup> Appellants to implement the decision of the Commission which the High Court in the Writ Application has held not legal and is ultra- vires. It is pertinent to note at this juncture, that an appeal has been lodged on 14.01.2016 by Sunil Jayatilake against the dismissal of the Writ Application by the High Court and subsequently on 07.01.2019 it has been withdrawn.

After the summons in contempt of Court application were served on the Respondents, they appeared before the High Court on 14.06.2016 and upon reading over the charge,

pleaded not guilty. Then the matter was fixed for inquiry and on 29.08.2016 before the commencement of the inquiry, on behalf of the Respondents following preliminary objections were raised on the maintainability of the charge.

1. Since there is no order of the Court against the Respondents, they have not violated any Order of the Court which resulted contempt of Court.
2. The High Court has no jurisdiction to charge or try the Respondents for contempt of Court.
3. For the reason that Sunil Jayathilake has preferred an appeal against the order of the High Court dismissing the Writ Application, the High Court is not empowered to grant reliefs prayed by the Appellants in the contempt of Court application.

Delivering the Order dated 27.10.2016, the learned High Court Judge has held with the Respondents on the 1<sup>st</sup> preliminary objection and discharged them from the contempt charge. The learned High Court Judge has not considered the 2<sup>nd</sup> and 3<sup>rd</sup> preliminary objections in his Order concluding that a necessity does not arise to consider those preliminary objections as the Court decides the 1<sup>st</sup> preliminary objection in favour of the Respondents and discharge the Respondents from the contempt charge. This Appeal is against that Order made by the High Court discharging the Respondents from the contempt of Court charge.

The learned High Court Judge discharged the Respondents from the contempt of Court charge solely on the basis that the Order dated 17.11.2015 of the learned High Court Judge in the Writ Application is not an Order which compels the Respondents to do any act or to refrain from doing any act and therefore, no obligation or duty casts upon the Respondents, consequent to which they have not committed any contemptuous act contrary to that Order of the Court. The argument of the learned Counsel for the Appellants is that the act of the Respondents to compel the Appellants to implement a decision which the Court has held illegal and ultra-vires amounts to contempt of Court. The learned Counsel for the Respondents took up the position that the Respondents have not acted in disobedience or in violation of an order/obligation made by the Court and therefore, they have not committed any act which is liable to be charged for contempt of Court.

When concluding that the decision marked as 03-16 is not legal and is ultra-vires, the learned High Court Judge has drawn his attention to the facts that even though, there was a decision of a five-member interview board regarding the particular promotion, disregarding that decision the Co-operative Employees Commission has concluded on the recommendation of the Secretary of the Co-operative Employees Commission that Sunil Jayatilake is the eligible person to be promoted to the post of Manager (page 46 of the Appeal Brief, last paragraph). Furthermore, the learned High Court Judge drawing his attention to the provisions of the North-Western Co-operative Employees Commission Act, No.5 of 1995, has concluded that the North-Western Co-operative Employees Commission is vested with powers to lay down the criteria of promotions and the Co-operative Limited is vested with powers to select the employees for promotions (page 48 of the Appeal Brief, 1<sup>st</sup> paragraph). Upon consideration of the above stated legal provisions and the facts, the learned High Court Judge has concluded that the decision of the Co-operative Employees Commission on 03-16 that Sunil Jayathilake has obtained the highest marks at the interview and he is the suitable person to be promoted to the post of Manager is not legally valid and is ultra-vires.

The doctrine of ultra-vires in Administrative Law implies that discretionary powers must be exercised for the purpose for which they are granted. The application of the doctrine is designed exclusively to ensure that administrative authorities do not exceed or abuse their legal powers, which are generally derived from legislations which stipulate the limits of such conferred powers. When an administrative authority, acts in contravention of mandatory rules stipulated in the legislation or without power or in excess of power or abuses power, such acts are liable to be rendered invalid on the ground of ultra-vires. The doctrine of illegality means where a statute gives a public authority power to perform an act and the public authority acts outside its jurisdiction that action becomes illegal. Therefore, in such instances the Court may declare that its action is ultra-vires for the reason of illegality. The Courts have long recognized that in Public Law, an ultra-vires act is void and therefore, must be treated as a nullity. This means that it will be treated as never had any legal effect, even if it is not found later by a Court ultra-vires.

The rules of the law of contempt of Court are intended to uphold and ensure the effective administration of justice. Oswald in his book on 'Contempt of Court' (3<sup>rd</sup> Ed,

1911 Page 6) has explained that “*speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties ....*” Lord President Clyde in the case of *Johnson vs. Grant 1923 SC 789* has stated that ‘The offence consists in interfering with the administration of justice ... it is the fundamental supremacy of the law which is challenged.’ (at page 790)

The contemptuous acts could be defined as acts which tend to undermine the administration of justice. Such acts would definitely be a threat to the stability of the judicial system of a country. In the case of *Morris vs. The Crown Office (1970) 2 QB 114* Lord Denning M.U., has observed that “the courts of justice must not be deflected or interfered with, those who strike at it strike the very foundations of our society.” Salmon L.J. has observed that “the sole purpose of the proceedings is to give our Courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented.”

In the case of *AG vs. Times Newspapers Ltd [1974] AC 273* Lord Diplock has observed that “Contempt of Court is punishable because it undermines the confidence of not only the parties to a particular litigation but also of the public as potential suitors in the due administration of justice by the established Courts of law.” In the case of *R. Vs. Gray, [1900] 2 QB 36* Lord Russell C.J. has held that any act done to interfere with the due course of justice or the lawful process of the Courts is a contempt of Court.

Therefore, it is clear that the purpose of law relating to contempt of Court is to secure the public confidence on judicial system and due and proper administration of justice in a country. In the instant action, after the Order of the High Court in the Writ Application which the Respondents were also parties was delivered, the Respondents were of the same view that Sunil Jayathilake should be promoted to the disputed post and direction marked as P-1 was given to the Appellants compelling them to act according to the earlier decision of the Respondents marked as 03-16 and informed that the Respondents would take action against the Appellants if they fail to act according to 03-16. Therefore, it is evident that the Respondents being parties to the Writ Application having knowledge that the Court has held that the decision marked as 03-16 taken by them is illegal and ultra-vires, the letter marked as P-1 has been issued

compelling the Appellants to act as per the decision marked as ෧෧-16. Under such circumstances, the Court is of the view that the said act of the Respondents definitely undermines the public confidence in the judiciary and the due and proper administration of justice which is according to the above stated legal background amounts to contempt of Court. Hence, the position of the Respondents that the learned High Court Judge, by the Order dated 17.11.2015 has not given any direction for them to perform any act or refrain from doing any act is not a valid defence and it does not permit the Respondents to go to the extent to compel the Appellants to perform an act which the Court has already decided illegal and ultra-virus.

Considering all the above stated facts and circumstances, I hold that the Order made by the learned High Court Judge discharging the Respondents from the contempt charge, for the reason that there is no Order of the Court against the Respondents which could be violated in order to constitute the offence of contempt of Court and therefore, the charge cannot be maintained is against the law. Therefore, I set aside the impugned Order dated 27.10.2016 and direct the learned High Court Judge to proceed with the contempt inquiry against the 1<sup>st</sup> to 4<sup>th</sup> Respondents. No costs ordered.

**JUDGE OF THE COURT OF APPEAL**

I agree.

**Prasantha De Silva J.**

**JUDGE OF THE COURT OF APPEAL**