

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

In the matter of an application for a Mandate in the nature of Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Nishantha Tilak Minuwangoda
No. 92, Alahakoonwatta,
Kanadulla,
Kuliyapitiya

C.A.Writ Application No:

58/2019

Petitioner

Vs.

1. National Police Commission
Building No. 9, Bandaranayake Memorial
International Conference Hall,
Buddhaloka Mawatha,
Colombo 07

(Ceased to hold office)

1 (A) P.H. Manathunga
Chairman,
National Police Commission

(Ceased to hold office)

(Ceased to hold office)

(Ceased to hold office)

(Ceased to hold office)

(Ceased to hold office)

(Ceased to hold office)

2. Professor S.T. Hettige

3. Savithri D. Wijesekara

4. Anton Jeyanathan

5. Y.L.M. Zawahir

6. Tilak Collure

7. Dr. Frank De Silva

(2nd – 7th Respondents are the Members of the
National Police Commission)

7(A). Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla

7(B). Hon. Justice Jagath Balapatabandi
Chairman

7(C). Mrs. Indrani Sugathadasa
Member

7(D). V. Shivagnanasothy
Member

- 7(E). Dr. T.R.C. Ruberu
Member
- 7(F). Ahamed Lebbe Mohamed Saleem
Member
- 7(G). Leelasena Liyanagama
Member
- 7(H). Dian Gomes
Member
- 7(I). Dilith Jayaweera
Member
- 7(J). W.H. Priyadasa
Member
- 7(K). M.A.B. Dayasenarathna
Secretary,
All of the Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla

8. D.M. Samansiri
Secretary,
National Police Commission
Building No. 9, Bandaranayake Memorial
International Conference Hall,
Buddhaloka Mawatha,
Colombo 07

9. Hon. Justice N.E. Dissanayake
Chairman
Administrative Appeals Tribunal
No. 35, Silva Lane,
Dharmapala Place,
Rajagiriya

10(A). Gnanathan P.C
Member,
Administrative Appeals Tribunal
No. 35, Silva Lane,
Dharmapala Place,
Rajagiriya

11. G.P. Abey Keerthi

Member,
Administrative Appeals Tribunal
No. 35, Silva Lane,
Dharmapala Place,
Rajagiriya

(Ceased to hold office)

12. Pujith Jayasundara
Inspector General of Police
Police Head Quarters,
Colombo 01

12(A). C.D. Wickremaratne

Inspector General of Police
Police Head Quarters,
Colombo 01

13. Hon. Attorney General
Attorney General's Department,
Hulftsdorp, Colombo 12

Respondents

Before: M.T. Mohammed Laffar, J.
S. U. B. Karalliyadde, J.

Counsel: P.K. Prince Perera instructed by N.H.S. Fonseka for the Petitioner
Dr. Chanuka Ekanayake S.C. for 12th and 13th Respondents

Argued on: 25.10.2021

Decided on: 07.04.2022

S.U.B. Karalliyadde, J.

The Petitioner joined the Police Department as a Reserve Sub-Inspector of Police and later absorbed into the Regular post of Sub-Inspector. While he was working in the Nikaweratiya Police Station, he was interdicted for an alleged Charge of soliciting and accepting a bribe from a timber merchant in the area. He was then indicted and prosecuted before the Colombo High Court under the Bribery Act and after the

prosecution case was concluded, he was acquitted and discharged from all 4 charges against him. Thereafter, a formal disciplinary inquiry was held in the Departmental level against him on two charges. Those two charges were based on the fact that by accepting a bribe the Petitioner had violated Sections 1 and 7 (C) of Appendix B of the Disciplinary Code of the Police Departmental Order A 7. While Section 1 deals with the discreditable Conduct, Section 7 (C) deals with Corrupt Practices of the police officers. At the formal disciplinary inquiry, the Petitioner was found guilty to the charges and as a result, he was dismissed from the service with effect from 02.05.2015. The Petitioner appealed against the decision of the inquiring officer. After considering the appeal, the National Police Commission (the NPC) had rejected the appeal by letter dated 21.11.2016 marked X6. Being aggrieved by the decision of the NPC, the Petitioner appealed against that decision to the Administrative Appeal Tribunal (AAT). The AAT, by its Order dated 15.10.2018 dismissed the appeal. By this writ application, the Petitioner seeks reliefs *inter alia*, to issue writs of certiorari to quash the Orders of the AAT dated 15.10.2018 marked P-5, the NPC dated 21.11.2016 marked X 6 and the disciplinary inquiry dated 02.05.2015 and to issue a writ of mandamus directing the 1st to 12th Respondents to reinstate the Petitioner in the service.

In the argument, the learned State Counsel appearing on behalf of the 12th and 13th Respondents raised a preliminary legal objection to the jurisdiction of this Court to hear and determine this writ application. The argument of the learned State Counsel is that, in terms of Article 61 A of the Constitution, this Court has no power to consider the decision of the AAT. Article 61 A of the Constitution provides thus;

61A. Subject to the provisions of Article 59 and of Article 126, no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission (the AAT- emphasis

added), a Committee, or any public officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or public officer, under this Chapter or under any other law.

In terms of Article 140 of the Constitution, subject to the provisions of the Constitution, the Court of Appeal has full power and authority to inspect and examine the record of the AAT and issue, according to law, orders in the nature of writs of certiorari and mandamus against the AAT.

Section 22 of the Interpretation Ordinance (as amended) reads as follows:

22. Where there appears in any enactment, whether passed or made before or after the commencement of this Ordinance, the expression “shall not be called in question in any court” or any other expression of similar import whether or not accompanied by the words “whether by way of writ or otherwise” in relation to any order, decision, determination, direction or finding which any person, authority or tribunal is empowered to make or issue under such enactment, no court shall, in any proceedings and upon any ground whatsoever, have jurisdiction to pronounce upon the validity or legality of such order, decision, determination, direction or finding, made or issued in the exercise or the apparent exercise of the power conferred on such person, authority or tribunal:

Provided, however, that the preceding provisions of this section shall not apply to the Court of Appeal in the exercise of its powers under Article 140 of the Constitution in respect of the following matters, and the following matters only, that is to say-

a) where such order, decision, determination, direction or finding is ex facie not within the power conferred on such person, authority or tribunal making or issuing such order, decision, determination, direction or finding; and

b) where such person, authority or tribunal upon whom the power to make or issue such order, decision, determination, direction or finding is conferred, is bound to conform to the rules of natural justice, or where the compliance with any mandatory provisions of any law is a condition precedent to the making or issuing of any such order, decision, determination, direction or finding, and the Court of Appeal is satisfied that there has been no conformity with such rules of natural justice or no compliance with such mandatory provisions of such law:”

In the case of *Peter Atapattu and Others V. People's Bank and Others*¹ Supreme Court held that the language of Article 140 of the Constitution was ‘broad enough to give the Court of Appeal the authority to review even on grounds excluded by the ouster clause.’ It was further held that the constitutional provisions being the higher norm, must prevail over the ordinary statutory provisions. The words 'subject to the provisions of the Constitution in Article 140 was necessary to avoid conflicts with other provisions of the Constitution as Articles 18 (3), 120, 124, 125, and 126 (3).

According to the aforementioned legislative provisions and case law, ouster clauses do not operate to exclude the constitutional jurisdiction conferred on the Supreme Court by Articles 17 and 126 and the Court of Appeal by Article 140 of the Constitution. Therefore, I hold that there is no merit in the above stated argument of the learned State Counsel.

One of the arguments of the learned Counsel for the Petitioner is that the Order of the AAT is against the rules of natural justice for the reason that it has not considered that the NPC, in its Order has failed to adduce any reasons to dismiss the appeal of the Petitioner against the Order of the Inquiring Officer who had conducted the formal disciplinary inquiry. Therefore, the

¹ 1997 (1) SLR 208.

learned Counsel argued that the Order of the AAT marked P 5 is arbitrary and capricious. When perusing the impugned Order of the AAT marked P 5, it is clear that even though, it has been brought to the notice of the AAT that the NPC has not adduced any reasons for its Order, the AAT had not considered that fact. An administrative authority can only justify its actions if, it is able to show reasons for its decisions. If it fails to give reasons for its decision, a reasonable suspicion would arise in the minds of ordinary citizens as regards the justifiability of the decision. If a decision maker fails to give reasons for a decision, that decision could be viewed as procedurally flawed.

In the case of *Regina v. Universities Funding Council, Ex Parte Institute of Dental Surgery*², it was held that when considering whether a disciplinary board should have given reasons, the court may find the absence critical ‘where the decision appears aberrant’. The giving of reasons may, among other things concentrate the decision-maker’s mind on the right questions; demonstrate to the recipient that this is so; show that the issues have been conscientiously addressed and how the result has been reached; or alternatively alert the recipient to a justiciable flaw in the process. A body not giving reasons for its decision was not acting inherently unfair, and particularly not where the decision was a collective one. It could be artificial to try to set out reasons made by a body of people.

In the case of *E. M. Wijerama and Others v. A. T. S. Paul*³, it was held that even in the absence of a legal requirement, it is desirable that any tribunal against whose decision an appeal is available should, as a general rule, state the reasons for its decision, a course of action which has the merit of being both fair to the petitioner and complainant concerned and helpful to the appellate authority.

² [1994] 1 WLR 241.

³ 76 NLR 241.

Under such circumstances, the Court is of the view that the decisions of the NPC and the AAT are arbitrary and capricious. Therefore, the Court decides to issue writs of certiorari to quash the Orders of the AAT dated 15.10.2018 marked P-5, the NPC dated 21.11.2016 marked X 6 and the disciplinary inquiry dated 02.05.2015 and a writ of mandamus directing the 1st to 12th Respondents to reinstate the Petitioner in the service. No costs ordered.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL