

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

CA Writ Application No. 253/2020

1. A.G. Ujitha Samarawickrama,
No. 05, Upper Lake Road,
Nuwara Eliya.

2. B.D. Uchitha Sampath Bandara,
No. 02, Park Road,
Nuwara Eliya.

Petitioners

Vs.

1. Hon. Namal Rajapaksa,
Minister of Youth and Sports,
Ministry of Youth and Sports,
No. 09, Philip Gunawardena Mawatha,
Colombo 07.

2. Anuradha Wijekoon,
Secretary,
Ministry of Youth and Sports,
Ministry of Youth and Sports,
No. 09, Philip Gunawardena Mawatha,
Colombo 07.

3. Amal Edirisuriya,
Director General,
Department of Sports Development,
No. 09, Philip Gunawardena Mawatha,
Colombo 07.

4. Rtd. Major General Mano Perera,
President,
Election Committee

5. Champa Gunawardena,
Member,
Election Committee

6. Olivia Gamage,
Member,
Election Committee

7. Dilhan Jayawardena,
President

7A. Ashhar Hameen
President

8. Kalinga Samaraweera
Vice President

8A. David Todd
Vice President

9. Suranjith Premadasa,
Vice President

9A. Suminda de Silva

Vice President

10. Rizvi Farook

Secretary

10A. Shehan de Tissera

Secretary

11. Rizmin Rasik,

Treasurer

11.A Upulwan Serasinghe

Assistant Treasurer

12. Namaz Fowzie

Assistant Secretary

12A. Rizvi Farouk

Assistant Secretary

13. Upulwan Serasinghe

Assistant Treasurer

13A. Col. Duminda Jayasinghe.

Assistant Treasurer

14. Ryan Todd

14 A. Jaliya Jayasekara

15. Anil Jayakody

15A. Dinesh M. Jayawardana

16. Ajith Hemachandra

16A. Yohan Lawrence

17. Pubudu Wickrema

17A . Shafraz Junaid

18. Gamini Kavikara

18.A Ryan Grey

19. Ashar Hameem

19.A Abeeth Dangalla

20. Andrew Silva

20A. Namaz Fowzie

21. David Todd

21A. Kalim Iqbal

22. Dilshan Dodanwela

22A. T.G.N. Gamini

23. T.G.N. Gamini.

23A. Malaka Herath

24. Malaka Herath

24A. Pubudu Wickrama

25. Jaliya Jayasekara

25A Kamil Hussain

26. Shehan D. Tissera

26A. Sanjaya S. Senarath

27. Mahes Gammampilla

27A. Eranda Wakista

28. Jayantha Fernando

28A. Suranjith Premadasa

29. Ryan Grey

29A. Dammika Peiris

30. Abeeth Dangalle

30A. Jayantha Fernando

31.A Janaka Dias

32A. Brig. Indu Samarakoon

33A. Major M.M. Chandana

All of

Sri Lanka Automobile Sports,

No.33, Torrington Place

Colombo 07.

Respondents

Before : D.N. Samarakoon, J.
B. Sasi Mahendran, J.

Counsel : Akiel Deen for thePetitioners

Kaushalya Nawaratne with Mokshini Jayamanna for the
7A,8A,10A-14A, 16A-23A, 26,27 and 29A-33A Respondents

Written

Submissions : 22.07.2022 (by the Petitioner)

On 21.07.27 (by the 7A-33A Respondent)

Argued On : 29.03.2022

Decided On : 29.07.2022

B. Sasi Mahendran, J.

The Petitioners, by Petition, dated 24th August 2020, invoking the writ jurisdiction of this Court in terms of Article 140 of the Constitution, seek, inter alia, a Writ of Certiorari to quash the decision or determination of the Sri Lanka Automobile Sports in their letter to the Nuwara Eliya Motor Racing Club marked “P18”, a Writ of Mandamus directing the Sri Lanka Automobile Sports through the 7th to 30th Respondents to register the Nuwara Eliya Motor Racing Club as an affiliate Member Club of the Sri Lanka Automobile Sports as from the date of the Sri Lanka Automobile Sports communication marked “P8” with voting rights from 09th March 2016, and a Writ of Mandamus directing the Sri Lanka Automobile Sports through the 7th to 30th Respondents to issue Nuwara Eliya Motor Racing Club with a Certificate of Registration as per Clause 7(xix) of the 2016 Regulations marked “P4”. The Petitioners informed Court on the date of argument as well as in their written submissions that they are only pursuing prayers (c), (d), and (e) in the Petition.

The dispute primarily revolves around the question of whether the Nuwara Eliya Motor Racing Club (hereinafter referred to as “the NEMRC”) is eligible to be registered as an affiliate Member Club of the Sri Lanka Automobile Sports (hereinafter referred to as “SLAS”). SLAS is the controlling body for Automobile (Motor) Sports in Sri Lanka, established under the Sports Law No. 25 of 1973, as amended. SLAS is also governed by the National Associations of Sports Regulations, No. 1 of 2016 made by the Minister of Sports under Section 41 read with Section 31 of the Sports Law. The Petitioners contend that the Nuwara Eliya Racing Club has satisfied the criteria to become an affiliate Club

having been issued a communication marked “P8” by the Secretary of Sri Lanka Automobile Sports certifying the same.

As narrated in the Petition, NEMRC is a Motor Racing Club in Sri Lanka, formed in the year 1997. It has conducted several meets and races over the years. It has a membership of 180 members. NEMRC by letter dated 27th June 2013 (marked “P2(b)”) applied to become an affiliate Member Club of SLAS, furnishing the details of their eligibility to be qualified in accordance with Rule 4(1) of the SLAS Constitution. Rule 4(i) titled, “Membership and Voting Rights” reads:

“The Association shall consist of legally and duly constituted Clubs or Associations, which have Motor sports as one of the primary objectives with a minimum paid up membership of 50 and have been in existence for at least one year. Such member Clubs and Associations shall have voting rights as detailed under Rule 8 conferred upon them by the Executive council after the satisfactory completion of a further probationary period of 12 months from the date of their admission. If the Executive Council should refuse to confer voting rights at the end of such probationary period, such Club or Association shall immediately cease to be a member. However, on fulfilling the requirements subsequently, as per clause 23 herein such Club shall be eligible for re-application and re- Consideration for membership.”

The President of the SLAS Interim Committee by letter dated 16th August 2013 (marked “P5”) required the NEMRC to forward a copy of the Minutes of the last AGM with the names of the Office bearers and Council members and confirmation of a paid-up membership of a minimum of 50 members. In addition, the NEMRC was required to conduct two SLAS authorised events with Clubs affiliated with SLAS within a calendar year. The Petitioners state that NEMRC fulfilled these requirements. They conducted two meets; the Nuwara Eliya Road Races and the Walawe Super Cross in conjunction with the Sri Lanka Motor Cycle Club. (The fact that these two meets have been conducted and SLAS was aware of the same is evident on a perusal of the document titled “Sri Lanka Automobile Sports Annual Report for the year 2014/2015” which is attached to the letter sent by the Secretary of SLAS to all Member Clubs dated 06th March 2015 – marked “P7(g)”. On page 2 of the same, it is stated that “Nuwara Eliya Motor Sports Club ran their two meets in conjunction with SLMCC”.)

Despite submitting the same, SLAS had not confirmed NEMRC's status as an affiliate Member Club. In a letter dated 08th December 2014 (marked "P6"), the Secretary of NEMRC wrote to the President of SLAS requesting to grant affiliation as a Member Club with full voting rights as they have met all the necessary criteria. The Petitioners state that following this letter, SLAS included NEMRC in all its official communications, circulars, and correspondences. By a communication dated **09th March 2015** (marked "P8") the Secretary of SLAS wrote to the Secretary of NEMRC thus:

"This is to certify that the Nuwara Eliya Racing Club is affiliated to Sri Lanka Automobile Sports which is the Governing body of the Automobile Sports in Sri Lanka.

Forwarded for your information and necessary action please" [emphasis added]

Relying on this communication NEMRC nominated five of its members to attend the SLAS Annual General Meeting held on 27th March 2015. This is because in terms of Rule 8 of the SLAS Constitution each Member Club can nominate five of its members to attend and vote at any General Meeting of SLAS. (Nonetheless, the said five representatives of NEMRC who participated could not vote since in terms of Rule 4 voting rights are conferred only on the completion of the 12-month probationary period from the date of its admission).

The 7th to 30th Respondents took office as the Executive Council of SLAS following the Annual General Meeting held on 29th March 2016. The Petitioners claim that since the time of their taking office on 29th March 2016, NEMRC has been unjustifiably prevented from exercising its rights as an affiliate Member Club and that without any valid reason they have treated the affiliation of NEMRC as having been cancelled or suspended with effect from 29th March 2016, without any inquiry. In this regard, our attention was drawn to Regulation 7(xx) of the National Associations of Sports Regulations 2016 which state that every National Association of Sports (in this case SLAS) shall have the power to:

"Cancel or suspend the registration of affiliates, clubs or other organisations on the disciplinary ground or breach of the provisions of the Constitution of the National Association of Sports after a due and proper inquiry held in accordance with the law."

The officials of NEMRC then met and appealed to the Sports Minister. Following an inquiry, the National Selection Committee, which was conferred powers by the

Minister to resolve grievances and disputes pertaining to any National Association of Sports, by letter dated 10th November 2018 (marked “P17”) wrote to SLAS recommending that NEMRC be registered as an affiliate Member Club of SLAS as NEMRC had fulfilled the requirements stipulated in the Constitution of SLAS.

Nevertheless, the Petitioners state that, despite subsequent requests of NEMRC to register it, the final of such requests on 12th February 2019 (marked “P19”), it is yet to be registered as an affiliate Member Club and is thus before this Court.

The 7A to 33A Respondents (the caption of the instant application has been amended to include the 7A to 33A Respondents to reflect the change in the membership of the Executive Council following the Annual General Meeting held on 31st August 2020) contend that the document marked “P8” relied on by the Petitioners was one signed by the Secretary of SLAS. However, because of the judgment of this Court in CA WRT Application No. 315/2014 delivered on 31.03.2016, the election of the office bearers to the Executive Council of SLAS at the election held on 27th August 2014 has been declared ultra vires.

It must be noted that the judgment of this Court was delivered on **31st March 2016**. It declared the elections held on **27th August 2014** ultra vires on the basis that the decision of the then Director General of Sports Development to hold an election for the Executive Council of SLAS was ultra vires. It was found that the Director General had exceeded his powers in terms of the Sports Law and its Regulations in doing so.

We do not think that it is just and fair for the Respondents to resile from their representation made to NEMRC on **09th March 2015** (“P8”). The communication, which is admitted by the Respondents to be signed by the Secretary, states the fact of NEMRC’s recognition as an affiliate Member Club. It is not contended that the signature of the Secretary is forged or that the document is fraudulent or any other contention to that effect. The fact that the decision evidenced therein had been made has not been denied. The Respondents did not contend that there was no such decision. There is no material submitted to this Court to show whether this decision was taken by the previous Executive Committee or the Executive Committee that was elected after the unlawful election. Nonetheless, the decision so made had been communicated.

Yet quite conveniently the Respondents using the decision of this Court to their advantage try to resile from an assurance represented by them solely on the basis that the Secretary had no authority. This is disingenuous conduct. The fact that the Secretary had no authority, because of the unlawful election, to issue the letter **P8** was contended by the Respondents for the first time before this Court. This has not been informed before to NEMRC or the National Selection Committee.

In this regard, the representation in the communication marked **P8** is clear, precise, and unambiguous to generate a substantive legitimate expectation that the applicant club had obtained affiliation status. It is unfair for the Respondents to dash such an expectation.

It must also be noted that when the five members of the NEMRC participated at the Annual General Meeting on **27th March 2015**, consequent to receiving the **P8** communication, the document titled “Attendance Register” which was submitted by the Respondents substantiates the fact that they participated as “Members.” In terms of Rule 8(iii) of the SLAS Constitution, “Member Clubs may nominate up to five of their members who will be eligible to attend any General Meeting of the Association”. However, although they may participate, they cannot vote until they have completed the one-year probationary period. Rule 4 states that “such Member Clubs and Associations shall have voting rights as detailed under Rule 8 conferred upon them by the Executive council **after the satisfactory completion of a further probationary period of 12 months from the date of their admission.**” [emphasis added] If the Council refuses to confer voting rights at the end of the probationary period, that Club or Association shall immediately cease to be a member.

It must be noted that in their Statement of Objections the Respondents note (in paragraph 22) that NEMRC “was permitted to attend the Annual General Meeting of the SLAS held on 27th March 2015 on the assumption that NEMRC would comply with the requisites to secure an affiliation.” In the absence of any evidence to show that the Respondents made this basis on which NEMRC was allowed to participate known to NEMRC, we cannot accept this contention.

As per Rule 4 of the SLAS Constitution, the Executive Council appears to have the discretion to decide whether to confer voting rights on a new Member Club that has completed one year's probation.

It is trite that there is neither unfettered nor untrammelled discretion. That discretion conferred must be exercised correctly and to suit the purposes for which it was conferred. This Court cannot substitute its views for that of the body exercising that discretion merely because such body arrived at a conclusion different from that which this Court prefers. Nevertheless, this Court can in the performance of its supervisory functions inquire on what basis such discretion was exercised, that is to review the exercise of that discretion on the ordinary principles of judicial review. To assess whether discretion has been properly exercised the reasons for such a course of action must be evaluated. As was suggested in the landmark judgment of Padfield v. Minister of Agriculture, Fisheries and Food [1968] A.C. 997, if a prima facie case of unlawfulness was established by the applicant, then in the absence of reasons the court could infer that the power was exercised outside of the legislative purpose. A position echoed by his Lordship Fernando J. in Wijepala v. Jayawardane SC 89/95 SCM 30.06.95 (cited in Hapuarachichi v. Commissioner of Elections [2009] 1 SLR 1):

“However, when this Court is requested to review such a decision if the Petitioner succeeds in making out a prima facie case, then the failure to give reasons becomes crucial. If reasons are not disclosed, the inference may have to be drawn that this is because in fact there were no reasons—and so also, if reasons are [now] suggested, they were in fact not the reasons, which actually influenced the decision in the first place.”
[emphasis added]

The Respondents state that NEMRC has not fulfilled the requisite criteria, in terms of Rule 4 of the SLAS Constitution, to be registered as an affiliate Member Club and that NEMRC has failed to pay the subscription payable by an applicant seeking affiliation and, on this basis, it was not made an affiliate Member Club.

However, there does not appear to be any document to show that such reasons have been communicated to NEMRC. Although the Executive Council can refuse entry of a Member Club that has completed probation, in the instant case, no documents dated on or about the time that probationary period came to an end (that is in 2016) to show that such has been informed to the Member Club or any Minutes of the Council Meetings in

which such a decision was taken to refuse voting rights, and the consequent cessation of membership.

The Respondents rely on a document dated **09th November 2018** (marked “**P18**”) in which they have required NEMRC to comply with the provisions of the SLAS Constitution. This letter quoted verbatim reads:

“Reference your letter dated 25th September 2018 was tabled to the Council Meeting held on 3rd October 2018.

Council noted that you have not furnished required information and credentials to consider your request even though stated by you. There is no evidence of completed application made previously nor to this Council from July 2017.

However, this Council request you to kindly forward your application along with the other required details for consideration of your application. Your objective details of paid up memberships proof of your existence proposal indicating the planned future activities race meets of your club and the details of the equipment you possess or plan to invest on and the time frames.

After consideration of your application you are require to pay joining fee of Rs. 500,000/-.”

Thus, it is seen that since the probationary period of NEMRC ended in 2016, it was only by this letter dated 09th November 2018 that the reasons for NEMRC’s non-affiliation were proffered. Even still, no reference is made to the end of the probationary period, or a decision of the Council taken at that time not to confer voting rights. Hence, as per the documents before this Court, it appears that till such time NEMRC’s affiliation lay in a state of limbo. This offends one’s ordinary sense of justice.

It is worth reiterating that one reason there exists a duty to give reasons is that the party against whom the adverse decision is made can be informed of the fault or shortcoming of his that resulted in the decision being made in that way. The person can then rectify such shortcomings or address a misapprehension, especially if the decision is made on a wrong assumption. In the instant case, it was only in 2018 that NEMRC was told that it had not complied with the SLAS Constitution.

As noted above, in the meantime, NEMRC had appealed to the Minister of Sports to intervene in this matter. Following this, the National Selection Committee by letter dated 10th November 2018 (marked “**P17**”) wrote to SLAS recommending that NEMRC be registered as an affiliate Member Club of SLAS as NEMRC has fulfilled the requirements stipulated in the Constitution of SLAS.

The Respondents state that SLAS responded to the National Selection Committee’s recommendation by the letter marked “**X5**” dated 09th November 2018 which reads:

“We refer to your letter dated 10th November 2018 with regard to the above.

Vide our letter dated 25th October 2018 to NEMRC, have requested to furnish information per SLAS regulations.”

We observed in Open Court that this response letter is dated **09th November 2018**. Thus, SLAS predicted the receipt of a letter from the National Selection Committee even before the Committee wrote to SLAS. This raises a doubt about whether this is merely a typographic error or something more.

The letter marked “**X5**” does not on the face of it refer to the letter marked “**P18**” by which SLAS wrote to NEMRC stating that it had not furnished the required information and credentials and that there had been “**no evidence**” of an application “**made previously or to this Council from July 2017**”. It instead refers to a letter dated 25th October 2018, which is not before us. The letter marked “**X5**” then appears to be a fabrication.

Further, the letter “**X5**” which is purportedly a response to the National Selection Committee’s letter marked “**P17**” ought to have informed the National Selection Committee, as per SLAS’s document marked “**P18**” sent to NEMRC, that NEMRC had not previously made an application to be registered as an affiliate Member Club. It is seen then that SLAS informed NEMRC that it had no evidence of a previous application, yet in its response to the National Selection Committee, it stated that it requested NEMRC

to furnish information, without mentioning that NEMRC had not made an application for affiliation before.

SLAS has not taken any action consequent to receiving the letter dated 12th February 2019 (marked “P19”) written to the Secretary of SLAS by the Chief Coordinator of NEMRC pleading its case to be registered as an affiliate Member Club despite the recommendation of the National Selection Committee. Thus, showing there has been a refusal to confer affiliation.

The SLAS stipulates in the document marked “P18” that the application must be accompanied by details mentioned in “P18” quoted above and a payment of Rs. 500,000/- joining fee to be paid. The requirements, including the payments, are based on those the Executive Council had agreed upon at a meeting of the Council held on the 25th of October 2017 (“marked X6”) to be applicable for **new affiliations**. It would be unfair to retrospectively impose such conditions decided in 2017 on a Club that has been accepted in 2015.

Thus, the conduct of SLAS in delaying the affiliation of NEMRC appears arbitrary.

The standard of unreasonableness was explained in the landmark judgment of Associated Provincial Picture Houses v. Wednesbury Corporation [1948] 1KB 223 by Lord Greene M.R. as:

“Something so absurd that no sensible person could ever dream that lay within the powers of the authority”

Subsequent cases attempted to reformulate this standard as it was held to be too rigorous. For example, in Secretary of State for Education v. Tameside Metropolitan Borough Council [1977] AC 1014 it was held:

“In public law, ‘unreasonable’ as descriptive of the way in which a public authority has purported to exercise a discretion vested in it by statute has become a term of legal art. To fall within this expression it must be conduct which no sensible acting with due appreciation of its responsibilities would have decided to adopt.”

Lord Cooke in the House of Lords in R v. Chief Constable of Sussex ex parte International Trader's Ferry Ltd [1999] 1 All ER 129, referring to Wednesbury (supra) and Tameside (supra) held:

“The simple test used throughout was whether the decision in question was one which a reasonable authority could reach.”

In Podimahatmaya v. The Land Reform Commission [1990] 2 SLR 416, his Lordship Palakidnar J. held:

“This Court can interfere where there is manifest unreasonableness in an administrative act. The test is whether the administrative authority has acted within the rules of reason and justice.”

In Meril v. Dayananda De Silva [2001] 2 SLR 11 his Lordship Gunawardana J. held:

“It is well known that if a decision is not based on rational grounds, then review by the Courts is sustainable.”

The conduct of the Respondents to NEMRC's application to become an affiliate Member Club to a reasonable person appears to be unreasonable. Accordingly, NEMRC's right to vote in the last two elections has been violated.

At the argument stage, the statement found in paragraph 16(a) of the Statement of Objections of the 7A to 33A Respondents which states “that the documents marked **P7(a) to P7(g) are copies of general correspondence** sent by the SLAS to its **membership**” [emphasis added] and further, in 16(b), “There is no proof that the said letters [P(7)(a) to P7(g)] have been received by the NEMRC in view of the fact that it is clearly seen that the said letters are not specifically addressed to the NEMRC” was brought to light. Yet, this Court on a perusal of the said documents observed that document marked “**P7(e)**” is a letter dated 09th March 2015 specifically addressed to the Secretary of NEMRC. This raises the question of whether the statement in paragraph 16, that P7(e) (which is

included in the documents P7(a) to P7(g)) which was sent to **its membership** was a Freudian slip admitting NEMRC's membership. The Respondent could not answer this.

It is clear, that from 2015 NEMRC had obtained membership. When NEMRC has presented documents to make a prima facie case that it had satisfied the steps to become an affiliate Member Club, with the recommendation of the National Selection Committee, the absence of reasons till 2018 leads us to draw an inference that there were no good reasons for the Council's failure to confer voting rights. There appears to be an arbitrary exercise of discretion.

For this reason and the reason that the conduct of SLAS appears suspect, especially since it appears to be delaying the process of affiliation and it has not taken any steps consequent to such recommendation made by the National Selection Committee to hasten the affiliation process despite numerous requests by NEMRC to do so. It should be noted that it is after NEMRC's appeal to the Minister, that the National Selection Committee intervened. They have recommended NEMRC's membership. That recommendation seems to have been ignored. Neither has that recommendation been canvassed.

When there appears to be an arbitrary exercise of discretion, an abuse of powers, by a controlling body of a sport at a national level, governed by the national Laws and Regulations relating to Sports and thus integrated into a system of statutory regulation, performing a public function by the regulation of that sport, unduly preventing the admission of an applicant as a member of such body, for no justifiable reason this Court can exercise its supervisory functions to guard against such abuse.

In the above circumstances, the Petitioner has satisfied this Court that SLAS has acted arbitrarily in refusing NEMRC's affiliation. Thus, we grant the relief prayed for in

prayer (d) and require that the NEMRC be registered with voting rights from 09th March 2016.

JUDGE OF THE COURT OF APPEAL

D. N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL