

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/455/2021

1. (Capt.) H. K. I. Perera (RTD)  
3/4, Galhena Road, Gonahena,  
Weboda.
2. Sajeev De Silva  
12/9, Ananda Balika Mawatha,  
Pita Kotte.

**Petitioners**

Vs.

1. Minister of Youth and Sports  
Ministry of Youth and Sports,  
No. 09, Phillip Gunawardana  
Mawatha,  
Colombo 07.
2. Secretary  
Ministry of Youth and Sports,  
No. 09, Phillip Gunawardana  
Mawatha,  
Colombo 07.
3. Director General  
Department of Sports Development  
No. 09, Phillip Gunawardana  
Mawatha,  
Colombo 07.

4. (CDR) H. U. Silva (RTD)  
President
5. H. R. M. Dharmasena  
Vice President
6. Pradeep Roshan Kaluarachchi  
Vice President
7. Sunethra Senevirathne  
Vice President
8. Pradeep Thushara Piyarathna  
Vice President
9. K. D. Dhammika Prasad  
Karandenigoda  
Secretary
10. Gayashan Bandara Rathnayake  
Assistant Secretary
11. B. M. L. P. K. Karunarathne  
Treasurer
12. D. M. I. K. Pusella  
Assistant Treasurer
13. Upali Samaraweera  
President, Election Committee
14. Prema Pinnawela  
Member, Election Committee
15. (WG CDR) Chandana Liyanage  
(RTD)  
Member, Election Committee

All of  
Sri Lanka Archery Association,  
No. 25A, Fonseka Road,  
Panadura.

**Respondents**

**Before** : Sobhitha Rajakaruna J.

**Counsel** : Avindra Rodrigo PC with Akiel Deen and Nishika Fonseka for the Petitioners.

Dr. Dan Malika Gunasekara with Amila Fernando and Rasika Sajith Saparamadu for the 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup> to 14<sup>th</sup> Respondents.

Sumathi Dharmawardena, ASG PC with Shemanthi Dunuwila, SC for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

**Argued on:** 18.05.2022

**Written submissions:** Petitioner - 17.06.2022

4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup> to 14<sup>th</sup> Respondents- 16.06.2022

**Decided on:** 29.07.2022

**Sobhitha Rajakaruna J.**

The learned President's Counsel for the Petitioner indicated to Court on 27.10.2021 that the Petitioners would limit their claim in the instant application only to the reliefs prayed for in paragraphs (d) and (f) of the prayer of the Petition. Accordingly, the Petitioners are seeking for a mandate in the nature of a writ of Certiorari quashing the decision to elect/appoint the 4<sup>th</sup> Respondent as the President of the Sri Lanka Archery Association ('SLAA') at the purported annual general meeting held on 31.05.2021 pursuant to the documents marked 'P17', 'P17(a)' and 'P17(b)'. Further, the Petitioners are seeking for a mandate in the nature of a writ of prohibition restraining the SLAA, *inter alia*, from allowing the 4<sup>th</sup> Respondent to be elected to and/or hold office as the President/any other posts of SLAA.

The Petitioner's pivotal argument is that the 4<sup>th</sup> Respondent unlawfully assumed office as the President of the SLAA for years 2019/2021 in violation of Regulation 5(4)(g) of the Regulations under Sports Law No. 25 of 1973 published in Extraordinary Gazette Notification 1990/23 on 27.10.2016 (marked 'P7a'). Consequently, the Petitioners argue that the 4<sup>th</sup> Respondent in his purported capacity as the President of the SLAA has acted

ultra vires in issuing the notice of Election for the years 2021/2023 ('P17' together with 'P17a' and 'P17b'). Notwithstanding the above, the Petitioners assert that in terms of Regulation 5(4)(g) of the Regulations under Sports Law No. 25 of 1973 published in Extraordinary Gazette Notification 2166/9 on 10.03.2020 (marked 'P16'), the 4<sup>th</sup> Respondent could not have stood for election for the post of President or any other posts for the years 2021/2023 of the SLAA Committee since;

- a) The 4<sup>th</sup> Respondent was an office bearer/executive committee member of a National Association of Sports in respect of which written notice has been issued under Section 32 of the Sports Law;
- b) The 4<sup>th</sup> Respondent was found to have violated Section 32 of the Sports Law by a formal committee (the Appeals Consultancy Committee) appointed by the relevant Minister.

The issues of this case arose with the Minister of Sports ('Minister') directing the relevant secretary to the said Ministry, by his letter dated 27.11.2018 (marked 'P2'), to suspend the SLAA with effect from 01.12.2018 and to appoint the nominated interim committee on the basis that the management of the SLAA has acted in a non-cooperative manner. The Minister has acted accordingly in terms of the powers vested in him under section 32(b) & 33 of the Sports Law No. 25 of 1973, as amended ('Sports Law') and his order was published in the Gazette Extraordinary No. 2114/47 on 14.03.2019, marked 'P3'.

The said Section 32 which deals with 'Refusal, suspension and cancellation of registrations of National Associations of Sports' reads:

*32. The Minister may refuse registration, or suspend or cancel the registration, of a National Association of Sports-*

*(a) for failing or neglecting to remedy any malpractices, misconduct or irregularities on the part of the office-bearers or members of such Association, on being noticed to do so in writing by the Secretary to the Ministry within such time as may be specified in such notice; or*

*(b) for inactivity, non-co-operation or obstruction in the implementation of the policies of the Ministry; or*

*(c) for failing to carry out its duties and functions*

*In this section " Secretary to the Ministry includes the Director of Sports, an Assistant Director of Sports or an Assistant Secretary to the Ministry.*

Admittedly the 4<sup>th</sup> Respondent was the Vice President of the SLAA at the time of issuing the above order by the Minister under the said sections 32(b) & 33 of the Sports Law. The Petitioners bring to the attention of this Court the Regulation 5(4) (g) of the National Associations of Sports Regulations No. 1 of 2016 (published in Gazette Extraordinary 1990/23 dated 27.10.2016, as amended marked as 'P7(a)' & 'P7(b)'). In terms of the said Regulation 5(4), a person shall be disqualified from being elected or otherwise to hold or continue to hold any paid or unpaid office or to hold any paid or unpaid post or to be a member of a Committee of any National Association of Sports or to be nominee of an affiliated club or organization in a National Association of Sports, if:-

(g) he has been an office bearer of the Committee of any National Association of Sports in respect of which, a notice has been issued under section 32 of the Sports Law for violation of the provisions of the section 32 of the Sports Law;

The Election Committee under the SLAA- Interim Committee announced that the election of the SLAA 2019/2021 would be held on 21<sup>st</sup> June 2019. The said Election Committee received nomination papers for the post of President on behalf of the 4<sup>th</sup> Respondent. Accordingly, the 4<sup>th</sup> Respondent has stood for elections within about six months from the order of the said Minister under section 32(b) of the Sports Law published in 'P3'. It is an undisputed fact that following the elections held on 21<sup>st</sup> June 2019, the 4<sup>th</sup> Respondent was elected as the President of the 2019/2021 and assumed duties as well.

It is observed that the above Regulation 5(4) (g) was applicable during the relevant period, particularly during the election of the SLAA 2019/2021. The said Regulation in unambiguous language debar a person who is an office bearer of a committee of any National Association of Sports in respect of which a notice has been issued under Section 32 of the Sports Law, from being elected or to hold office of any National Association of Sports. Therefore, my considered view is that the 4<sup>th</sup> Respondent is not entitled to be elected as the President of 2019/2021 of the SLAA. My said finding is based on;

- i. The above provisions of regulation 5(4)(g) &

- ii. The undisputed facts that (a) the SLAA has been issued with the said order marked 'P3' which is against the said SLAA and (b) the 4<sup>th</sup> Respondent was an office bearer of SLAA during the time the said order 'P3' was issued.

There is another aspect of the arguments raised on behalf of the Petitioners who claim that the said election was unauthorized. The Petitioners lodged an appeal dated 23.06.2019 (marked 'P10') with the Minister and in pursuant to such Appeal, the Appeal Objections Consultancy Committee ('Consultancy Committee') comprising of a retired Supreme Court Judge and two others has examined the said Appeal. The said Committee opined on 12.07.2019 ('P11') that the nomination of the 4<sup>th</sup> Respondent was unlawful and recommended to conduct the elections only after rejecting the nominations of the 4<sup>th</sup> Respondent and two other candidates. The Petitioners assert that despite repeated efforts by them to have the said conclusion of the said committee given effect to, no action was taken in that regard.

The contention of the 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup> to 14<sup>th</sup> Respondents ('Respondents') is that the then Minister has neither made any direction regarding said decision 'P11' nor has suspended the SLAA thereafter. It seems to be that it was the only excuse given by the Respondents for not giving effect to the said conclusion (marked 'P11') of the said Consultancy Committee. The opinion and the recommendation of the said Consultancy Committee perhaps displeased the 4<sup>th</sup> Respondent or the other authorities of SLAA. However, the important question which leads to the roots of good governance & principles of the 'Rule of Law' is on what authority or power the 4<sup>th</sup> Respondent as a law abiding ordinary person disregarded the opinion and recommendations of the said Committee. In respect of the said opinion, at 'P11', in my view, the 4<sup>th</sup> Respondent had two reasonable options, namely (a) to step down with good grace upholding the rule of law or (b) appeal or resist in an appropriate manner against the said opinion. There is no evidence before this Court to establish the 4<sup>th</sup> Respondent taking any such or similar steps.

For the reasons set out above I am of the view that the 4<sup>th</sup> Respondent and or other authorities including the Election Committee has violated the conclusions and the recommendations marked 'P11', made by the Consultancy Committee. Moreover, not making any specific direction based on the said 'P11' by the Minister, in my view, is a failure on the part of the said Minister.

The Respondents further submit that the Petitioners have failed to apply to this Court by way of an application of this nature at the time of their grievance. The Respondents contend that the failure on the part of the Petitioners for not taking prompt action aptly falls within the established law that recognizes the equitable maxim 'he who sleeps on his rights has no remedy'. As opposed to such arguments the Petitioners assert that without any delay they wrote to the Minister by letter dated 20.06.2019 ('P9') challenging the nomination of the 4<sup>th</sup> Respondent and subsequently, objected to the said nomination at the 2019/2021 SLAA elective Annual General Meeting. Soon after the elections the Petitioners preferred the appeal marked 'P10'. Thus, I see no reasons to accept the proposition of the Respondents that the Petitioners have not sought for the remedy at the proper instance.

In light of the foregoing, I take the view that accepting the nomination of the 4<sup>th</sup> Respondent for the post of President 2019/2021 of the SLAA by the Election Committee is eminently irrational, unreasonable and is guilty of an illegality. Hence such irrationality, unreasonableness and illegality eventually outweigh the aforesaid defenses taken up by the Respondents. In this regard the Petitioners are relying upon the following passage of Lord Denning in *Macfoy vs. United Africa Co. Ltd (1931) 3 ALL ER 1169 (at. 1172)*,

*"If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay here. It will collapse."*

In addition to above the Petitioners are highlighting the amendments brought into the Regulation 5(4)(g) by virtue of the Gazette Extraordinary No.2166/9 dated 10.03.2020 and the said Gazette notification is marked as 'P16'. Accordingly, the Sections under 5(4)(g) of the Regulations No.1990/23 issued on 27.10.2016 (marked 'P7a') are repealed and certain new sections are inserted instead. The amended section (g) in relation to the said Regulation 5(4) is as follows;

"he has been an office bearer of any National Association of Sports, an Executive Committee member for whom a written notice has been issued under the Section 32 of the Sports Law and **has been convicted of violating of the provisions of the Section 32 (a), (b) and (c) of the Sports Law** in an inquiry conducted by a formal

committee appointed by the National Association of Sports, Ministry of Sports or Department of Sports Development.” (Emphasis added)

In view of the above provisions, the Petitioners argue that the conduct on the part of the 4<sup>th</sup> Respondent to act as President of the SLAA and issue notice of the elective Annual General Meeting to be held for the 2021/2023 SLAA committee is *ultra vires* since election to the post of SLAA President for 2019/2021 is unlawful and also due to the fact that the 4<sup>th</sup> Respondent has violated ‘P11’. Anyhow, the Respondents twisting their arguments in collaboration with the said amended Regulation 5(4)(g) submit that the Section 32 of the Sports Law requires the issuance of a written notice under that Section to a person who is holding a position in the capacity of a member of an Executive Committee upon been convicted of violating the provisions of the said section. The Respondents’ argument is that the notice under the said Section 32 should be issued against the 4<sup>th</sup> Respondent rather than issuing such notice against the Sports Body for the 4<sup>th</sup> Respondent to be disqualified as mentioned in the Regulation 5(4)(g).

On a careful examination of the said Section 32 and other provisions of the Sports Law, it emanates that the Minister makes an order under Section 32 against the National Association of Sports and not against any individual/particular office bearer of such Association. The ‘P2’ evinced that the Minister has issued the said order as the then management of the SLAA has acted in a non-cooperative manner and it is clear that such order was not focused on one individual. Although, the provisions of Section 34 are not directly relevant to this question, the scheme of those provisions are very much apt here. In terms of Section 34, where the Minister makes an order under Section 32 suspending the registration of any National Association of Sports, the Secretary to the Ministry of the Minister may, by notice in writing, require the office-bearers of such Association to deliver all movable property to the Director of Sports. Any person who fails to comply with any requirement imposed on him will be guilty of an offence and shall be liable on conviction to a fine. Therefore, the scheme of the provisions of the said Section is that all the office bearers are collectively responsible and are directly bound by an order of the Minister issued under Section 32. Thus, I cannot accept the argument of the Respondents that a notice under said Section 32 should be served individually to an office bearer in order to make him disqualified under the said Regulation 5(4)(g).



Hence, I am inclined to accept the assertions of the Petitioners that the 4<sup>th</sup> Respondent's election and/or appointment to the post of President of SLAA for 2019/2021 is illegal and any act flowing therefrom is ultra vires, null and void. In light of the above, I take the view that the SLAA is not entitled to allow the 4<sup>th</sup> Respondent to be elected and/or to hold office in SLAA as a President and/or by way of any other posts and/or to be a member of the committee of the SLAA in view of 'P17', 'P17a' and 'P17b'.

In the circumstances, I proceed to issue a writ of Certiorari as prayed for in paragraph (d) of the prayer of the Petition and also issue a writ of Prohibition as prayed for in paragraph (f) of the prayer of the Petition.

**Judge of the Court of Appeal**