

**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 Prohibition
under and in terms of Article 140 of the
Constitution.

Walasmulle Abhaya Thero,
Nisala Arana,
No. 48,
Kidelpitiya,
Millava

Petitioner

**C.A. Writ Application
No. 349/2018**

- Vs -

1. Nimal Kotawelagedara,
Commissioner General,
Department of Buddhist Affairs,
“Dahampaya”,
No. 135, Srimath Anagarika Dharmapala
Mawatha,
Colombo 07.
2. H.N. Kumari,
Commissioner,
Department of Buddhist Affairs,
“Dahampaya”,
No. 135, Srimath Anagarika Dharmapala
Mawatha,
Colombo 07.
3. K.A.D.J. Wijayawardena
Assistant Commissioner – Buddhist
Temporalities,
Department of Buddhist Affairs,
“Dahampaya”,

No. 135, Srimath Anagarika Dharmapala
Mawatha,
Colombo 07.

4. Chandraprema Gamage,
Secretary,
Ministry of Buddha Sasana,
135, Srimath Anagarika Dharmapala
Mawatha,
Colombo 07.
5. Gamini Jayawickrama Perera,
Minister of Buddha Sasana,
Ministry of Buddha Sasana,
135, Srimath Anagarika Dharmapala
Mawatha,
Colombo 07.
6. P. Viyani Gunathilaka,
Commissioner General,
Department for Registration of Persons,
Department for Registrations of Persons
10th Floor, Suhurupaya,
Sri Subhuthipura Road,
Battaramulla.
7. H.M.I.K. Herath,
Assistant Commissioner,
Department for Registration of Persons,
Department for Registrations of Persons,
10th Floor, Suhurupaya,
Sri Subhuthipura Road,
Battaramulla.
8. M.N. Ranasinghe,
Controller General of Immigration and
Emigration & Commissioner for Registration
of Persons of Indian Origin,
Department of Immigration and Emigration,

“Suhurupaya”,
Sri Subhuthipura Road,
Battaramulla.

9. A.L.V.I. Liyanarathna,
Controller – Passport,
Department of Immigration and Emigration,
“Suhurupaya”,
Sri Subhuthipura Road,
Battaramulla.

10. Most Ven. Pasgoda Sri Jinavanshabhidana
Mahanayaka Thero,
Maha Vihara Wanshika Shiyamopali
Wanawasa Sangha Sabha,
Wanawasa Sangha Sabha Office,
Wanawasa Sangha Headquarters,
Wathuravila,
Thibbotuwava, Kahaduwa.

11. Ven. Ampitiye Mangala Anunayaka Thero,
Madakara Aranya Senasanaya,
Ingiriya.

12. Upulvila Sasanasumana Thero,
Chief Leckhakadikari,
Maha Vihara Wanshika Shiyamopali
Wanawasa Sangha Sabha,
Wanawasa Sangha Sabha Office,
Wanawasa Sangha Headquarters,
Wathuravila,
Thibbotuwava, Kahaduwa.

13. Wasantha R. Weerasena,
234/1/A, Eswassa South,
Puwakpitiya.

14. M. Ruwan Ranasinghe,

343/B2, 2nd Lane.
Mahawatte,
Pannipitiya

15.P. Manjula Senerviratne
11/25, Paradize Place,
Hokandara South.

16.M. Nalaka Maduranga,
63, Araliya Gardens, Mattegoda

17.Hasitha Dananjaya Gamage,
No. 128/9, Horahena Road, Pannipitiya,
Kottawa.

18.Kalugamage Charana Adhajith Perera,
15A, Galudupita,
Ragama.

19.Woshika Prasad Mahanama,
No. 102B, Niyadagala,
Pannipitiya.

20.W. M. Sameera Chandana Sadaruwan
Jayathilaka
Nelligasthenna, Dabawinna,
Welimada

21.Crishantha L. Mahanama
No. 102B, Niyadagala,
Pannipitiya

22.Ruwan Seneviratne,
254/4, Maharanugegoda,
Ragama.

23.Lalitha Methsiri Jayaweera,

53/1, Waturaboda,
Malwana

24.A.M. Charith Guneratne,
261A/1,
Divulapitiya.

25.Samantha Rodrigo,
127, Temple Road,
Elapitiwala,
Ragama.

26.Shihan Chaturanga Galagedara,
43/A, Mabolgoda,
Panipitiya.

27.Govidu Sulochana Sampath Adhikari,
313/A, Banagalawatte,
Kottawa,
Pannipitiya.

Respondents

Before: C.P. Kirtisinghe – J
Mayadunne Corea – J

Counsel: Sanjeewa Jayawardena PC with Rukshan Senadeera for the
Petitioner.
Vikum de Abrew PC, ASG for the 1st to 5th and 7th to 9th Respondents.
Hemaka Senanayake with A. Ranasinghe for 12th Respondent.
Chandaka Jayasundara PC with Chinthaka Fernando and Thilini
Vidanagamage for the 13th and 15th Respondents.
Nihal Jayamanne PC for 14th Respondent.
Irusha Kalidasa for the 17th and 18th Respondents.
Hemantha Gardihewa for the 19th, 24th and 25th Respondents.
Thishya Weragoda for the 23rd Respondent.
Upul Kumarapperuma for the 20th Respondent.

Pulasthi Hewamanna with Anjalee Karunaratne for the 26th Respondent.

Argued on: 09.12.2021

Decided on: 29.07.2022

C.P. Kirtisinghe – J

The Petitioner is seeking for a mandate in the nature of a writ of certiorari quashing the endorsement and/or declaration and/or alteration made by the 1st Respondent on the Declaration regarding Samaneras under Section 41 of the Buddhist Temporalities Ordinance No. 19 of 1931 resulting in the invalidation of the said declaration and the removal of the Petitioner from the status of a Samanera and de-registration from the Register of Samanera maintained by the 1st Respondent under Section 41 of the Buddhist Temporalities Ordinance No. 19 of 1931, for mandates in the nature of writs of certiorari quashing the decision of the 6th and/or 7th Respondents to cancel the National Identity Card of the Petitioner which indicates the Petitioner as a Samanera, for a mandate in the nature of a writ of certiorari to quash any decision being made or having been made by the 8th or 9th Respondents to cancel the passport of the Petitioner, for a mandate in the nature of a writ of certiorari quashing the decision of the 10th Respondent or his subordinates to remove the Petitioner from the Sangha Sabhawa, for a mandate in the nature of a writ of prohibition restraining the 8th and 9th Respondents from taking any steps to cancel or suspend the passport of the Petitioner on the basis that the 10th Respondent has removed the Petitioner from the Sangha Sabhawa, for a mandate in the nature of a writ of prohibition restraining the 1st to 12th Respondents from interfering with or impeding the dissemination of the Buddha Dharma by the Petitioner or from interfering with or impeding the Petitioner from delivering sermons and for the interim relief prayed for by the Petitioner in the prayer to the Petition.

The facts of the case can be summarized as follows:-

The Petitioner at all times material to this Application has been a Samanera Bhikku of the Vanawasa Parshawaya of the Siyam Maha Nikaya of which the 10th Respondent was the Mahanayaka Thera. The Petitioner was ordained as a Samanera of that Nikaya under his robing tutor Venerable Ampitiye Mangala Thero, the 11th Respondent on 09.10.2014. After some time, certain parties had made an allegation against the Petitioner to the effect that the Petitioner is

misinterpreting several of the words in the Thripitakaya. Thereafter, the Petitioner had observed a letter circulating in the social media to the effect that the Petitioner has been removed from the Sangha Sabhawa for the reason of acting against the principles of Buddhism (අධර්මවාදී කටයුතු) and also requesting the 1st Respondent to cancel the Declaration regarding Samaneras issued under Section 41 of the Buddhist Temporalities Ordinance.

Thereafter, the Petitioner through his Attorney-at-Law had requested the 1st Respondent to confirm as to the authenticity of that letter and the 1st Respondent had informed the Petitioner by letter dated 31.08.2018 (P20) that the Petitioner's Samanera Certificate has not been cancelled as at that date, but however, further informed that the Petitioner was removed from the pupilage of his tutor and the said removal has been indicated in the said Certificate. The Petitioner's Samanera Declaration (the Declaration regarding Samaneras under Section 41 of the Buddhist Temporalities Ordinance No. 19 of 1931) has been marked P21. The relevant alterations made by the 1st Respondent are visible on that document. There are two alterations made on two different dates. One entry reads as follows:-

“2018.06.20 වන දින ශිෂ්‍ය භාවයෙන් ඉවත් කරන ලදී.”

ඉහත සටහන යොදන ලද්දේ ස්වාමෝපාලි වනවාස සංඝ සභාවේ අතිපූජ්‍ය මහනායක ස්වාමීන්ද්‍රයන් වහන්සේගේ 2018.07.25 දින දරණ ලිපිය අනුව වේ.

The other reads as follows:-

"වනවාස සංඝ සභාවෙන් ඉවත් කර අංක 89633 දරණ මෙම සාමාජිකයා භික්ෂුන් පිළිබඳ ප්‍රකාශය අවලංගු කරන ලදී."

ඉහත සටහන යොදන ලද්දේ ස්වාමෝපාලි වනවාස මහා සංඝ සභාවේ අතිපූජ්‍ය මහනායක ස්වාමීන්ද්‍රයන් වහන්සේගේ 2018.08.13 දින දරණ ලිපිය අනුව වේ.

The letter marked 1R2(a) dated 2018.07.25 is a letter addressed to the 1st Respondent by the Mahanayaka Thera of the Shiyamopali Vanawasa Nikaya. By that letter, the Mahanayaka Thero had informed the 1st Respondent that the Mahanayaka Thero has been informed that the tutor of the Petitioner had removed the Petitioner from the pupilage with effect from 20.06.2018. He had further informed the 1st Respondent as follows:-

එකී වළස්මුල්ලේ අභය සාමාජිකයා තැනගේ (සාමා:ලි: අංකය 89633) අංක දරණ මා ලග ඇති සාමාජිකයා පත්‍රයේ 15 වන තීරුවේ වෙනත් කිවයුතු කරුණු යටතේ "2018.06.20 වන දින ශිෂ්‍ය භාවයෙන් ඉවත් කරන ලදී" යනුවෙන් සටහන් කරන ලද

බවත්, ඔබ කාර්යාලයේ ඇති එකී ලේඛණයේ එසේ සටහන් තබා අප වෙත දැනුම් දෙන මෙන් සිහිපත් කරමි.

The letter dated 13.08.2018 marked 1R3(b) (also marked as P24) is a letter addressed to the 1st Respondent by the Mahanayaka Thero of the Nikaya. By that letter, the Mahanayaka Thero had informed the 1st Respondent that the Petitioner has been expelled from the Vanawasa Sangha Sabhawa. It reads as follows:-

ඒ අනුව, මෙම අධර්මවාදී කටයුතු නිසාවෙන් එම සාමනේර තැන, අපගේ වනවාස සංඝ සභාවෙන් වහාම ඉවත් කරන බවත්, සාමනේර හික්ෂුන් ලියාපදිංචි කිරීමේ අංක 89633 යටතේ බෞද්ධ දෙපාර්තමේන්තුවේ ඇති සාමනේර හික්ෂු ලියාපදිංචිය වහාම අවලංගු කරන ලෙසත් මෙයින් දන්වමි.

By Paragraph (b) of the prayer to the Petition, the Petitioner is seeking for a mandate in the nature of a Writ of Certiorari against the 1st Respondent.

Paragraph (b) of the prayer to the Petition reads as follows.

(b) Issue a mandate in the nature of writ of certiorari quashing the endorsement and/or declaration and/or alteration made by the 1st Respondent on the “Declaration regarding Samaneras” under Section 41 of the Buddhist Temporalities Ordinance No. 19 of 1931, produced marked P21, resulting in the invalidation of the said declaration and the removal of the Petitioner from the status of a Samanera and de-registration from the Register of Samanera, maintained by the 1st Respondent under Section 41 of the Buddhist Temporalities Ordinance No. 19 of 1931 as amended.

By Paragraph (e) of the Prayer to the Petition, the Petitioner is seeking for a mandate in the nature of a Writ of Certiorari against the 10th Respondent Mahanayaka Thero quashing the decision to remove the Petitioner from the Sangha Sabhawa.

Paragraph (e) reads as follows,

(e) Purely and exclusively in the context of and in view of the statutory countenance, expression and recognition of the power of correction, addition or alteration, vested in the Mahanayake or Nayaka Thero of the Nikaya, in respect of the Register of Samaneras, issue a mandate in the nature of Writ of Certiorari, quashing the decision of the 10th Respondent and/or his agents and/or subordinates, to remove the Petitioner from the “Maha Vihara Wanshika Shiyamopali Vanawasa Sangha Sabhawa”, as demonstrated In the 10th Respondent letter dated 13.08.2018 (Produced marked P-24);

The learned Additional Solicitor General who appeared for the 1st to 5th and 7th to 9th Respondents and the learned Counsel for the 12th Respondent submitted that the decision of the Sangha Sabhawa or the Mahanayaka Thero of the Nikaya cannot be questioned by this court and that decision is not reviewable. The learned Additional Solicitor General further submitted that the Commissioner General of Buddhist Affairs was not exercising a discretion and his act is purely a ministerial function.

In paragraphs 84, 85 and 86 of the Petition and in the corresponding paragraphs of the affidavit, the Petitioner states as follows:-

84) Further, the Petitioner states that the 1st Respondent being the Commissioner General of Buddhist Affairs is duly bound in terms of the law, the Rule of Law, Due Process, equal protection of the law and entrenched principles and doctrines of administrative law, (as he is exercising a strictly statutorily designed and delineated power, and is **the final authority who decides the issue of de-registering a Samanera** under the provisions of the Buddhist Temporalities Ordinance) to **verify objectively** (if no reasons or justification are adduced or if inadequate or facile reasons or justifications are adduced) as to why the state machinery and the Department of Buddhist Affairs and he, as the apex functionary thereof, in his capacity as the Commissioner of Buddhist Affairs, **should act on a utterly arbitrary, mala fide, ad hoc, capricious act of the head of the Nikaya** and lend the imprimatur of the state machinery in order to marginalize a Samanera on a random basis. In any event, as will be elucidated before Your Lordships' Court during the course of the hearing, there has been a total non-compliance with the provisions and stipulations and requirement of Section 41(5) and also the situation contemplated in the said statutory section, which is of prime importance, within the statutory scheme, as will be demonstrated, has/have not been fulfilled. This is clearly borne by the letter dated 13.8.2018, purportedly issued by the 10th Respondent to the 1st Respondent-Commissioner.

85) Accordingly, due **to the patent non-fulfilment and non-satisfaction of the requirement of the prefatory portion of Section 41(5)** of the Buddhist Temporalities Ordinance No. 19 of 1931 as amended, the Commissioner General of Buddhist Affairs, being the 1st Respondent, **could very simply, not have, under any circumstances, de-registered the Petitioner** from the official register of Samaneras maintained under Section 41 of the Ordinance.

86) The Petitioner is advised to state and does hereby state that in terms of pure law, and principles of Administrative Law, very simply, **a vital condition precedent to the valid exercise of power by the Commissioner General of Buddhist Affairs**, in terms of Section 41(5) of the Buddhist Temporalities Ordinance, as amended **had not been satisfied and/or fulfilled and as such in no manner whatsoever** was the **1st Respondent is entitled to alter/or invalidate** the said declaration and/or remove Petitioner from the status of a Samanera and/or de-register from the Register of Samanera, maintained by the 1st Respondent under Section 45 of the Buddhist Temporalities Ordinance No. 19 of 1931 as amended.

Therefore, it is the case of the Petitioner that the 1st Respondent – the Commissioner General of Buddhist Affairs is the final authority who decide the issue of de-registering a Samanera and he should verify objectively if no reasons or justification are adduced or inadequate reasons or justifications are adduced as to why he should act on an arbitrary, *mala fide, ad hoc*, capricious act of the head of the Nikaya. If that is so, the Commissioner’s function is not a mere ministerial function and he can inquire into the validity of the Mahanayaka’s decision if the Mahanayaka had not given adequate reasons. Commissioner is the final authority who decides the issue of de-registering.

In the letter marked P24 the 10th Respondent had states as follows:-

“අධර්මවාදී කටයුතු නිසාවෙන් සංඝ සභා සාමාජිකත්වයෙන් ඉවත් කිරීම....

“වලස්මුල්ලේ අභය සාමනේර තැන ථේරවාදී පරියාජිති ධර්මයට විකෘති අර්ථ එක්කරමින් ධර්මය විකෘති කරන ක්‍රියාවලියක නිරත වෙමින් කටයුතු කරන බවට තොරතුරු තහවුරුවී ඇති අතර”....

The Petitioner states that the aforesaid reasoning has been rendered by the 10th Respondent as a very general statement, with no further elaboration as to how the Petitioner apparently altered the Dharma and thus it amounts to no reason. The Petitioner states that the 10th Respondent had reached the aforesaid finding without holding an inquiry into the complaints received by him against the conduct of the Petitioner and without calling for any explanation from the Petitioner. It is the case of the Petitioner that according to the constitution of the Sangha Sabha of the Nikaya, the 10th Respondent cannot expel him without calling for an explanation from him and without holding an inquiry.

It is not a disputed fact that the Petitioner is only a Samanera Bhikku and not an Upasampada Bhikku. The Petitioner says that to expel a Bhikku from the

priesthood he must be found guilty of committing an act of පාරාජිකා and the Petitioner had committed none. That situation applies to an expulsion of a Bhikku. In the case of a Samanera Bhikku, there are other grounds on which a Samanera Bhikku can be discontinued from the pupilship.

In the case of **Mahamadagalle Upananda Thero v Dunupothagama Sobitha Thero 65 NLR 459**, Sansoni J (as he then was) quoting from Mahavagga (at 1.27.6) which deals with the qualities which a pupil should possess in relation to his tutor states thus:-

“The Pupil possessed of the following five qualities should be dismissed: if he is wanting in great affection towards his teacher, if he has not much faith in him, if he does not display correct modesty towards him, if he lacks great respect for him, if he does not have much good will towards him”.

Quoting the view expressed by Rev. Sri Dharmarama Thero who gave expert evidence in the case of **Dammaratna Unnanse v Sumangala Unnanase 14 NLR 400**, Sansoni J observed that “a pupil must continue to be obedient to his tutor, and if he is disobedient it is inconsistent with his being a pupil in the Buddhist sense.”

The very word ‘anthevasika’ used in the Vinaya to denote a pupil indicates that he is one who is near at hand. Therefore, the Petitioner cannot maintain the position that the 4 specific instances mentioned in the Parajika Paliya in Vinaya Pitakaya (පාරාජිකා පාලිය in විනය පිටකය) are the only instances in which a Samanera Bhikku can be expelled from pupilship, for the aforementioned reasons.

We are not called upon to answer the question whether the Petitioner was lacking the aforementioned qualities and we must refrain from going into that question. The question that arises here is whether a formal inquiry is an essential pre-requisite to a Samanera Bhikku forfeiting his rights.

In the case of **Mahamadagalle Upananda Thero v Dunupotagama Sobitha Thero** cited above the Plaintiff Priest had deserted his tutor and left the temple where the tutor was residing and the tutor informed the Mahanayaka Thero of the Chapter that he has discontinued the pupil and prayed that his registration be cancelled. No formal inquiry was held and the Mahanayaka Thero informed the Registrar-General who amended the declaration of the pupil by adding the remark “cancelled the pupilship”.

In the Appeal, it was argued by Mr. E.B. Wickramanayake Q.C that on being robed the Plaintiff-Appellant (Pupil) acquired a certain status and he could not be deprived of that status except upon due inquiry after proper charges had been framed against him. Sansoni J (with T.S. Fernando J agreeing) held that on the facts of that case an inquiry was not necessary. Therefore, an inquiry is not an essential pre-requisite to expel a Samanera Bhikku from pupilship. Depending on the facts and circumstances of the case it can be done without an inquiry.

In any event, this court cannot question the validity of the decision of the Mahanayaka Thero. That decision is judicially not reviewable.

S.A. De Smith in his **“Judicial Review of Administrative Actions” 5th edition page 186** says thus “Decisions of Leaders of particular faiths on disciplinary issues are also, as authorities stated, not judicially reviewable”. That is because there is no sufficient public element and statutory underpinning. Further, questions of religious law and faith are not appropriate subjects of judicial review.

In the case of **Rev. Keselwatugoda Chandananda Thero v Rev Sirimalwatte Ananda Mahanayaka Thero 1996 (2) SLR 287** Dr. Ranaraja J observed as follows:-

“The relationship of tutor and pupil is sufficient to make the pupil bound by a judgment. It must be assumed that when the Maha Nayaka Thero informs the Commissioner of Buddhist Affairs of a decision to alter the entries in the register of Bhikkus in respect of a Bhikku of a particular Nikaya that an ecclesiastical dignity of that eminence would act with a proper sense of responsibility.”

The ratio decidendi of that judgment can be summarized as follows:-

“Discipline of Bhikku is a matter governed by Vinaya Pitakaya, the inquiry into the charges and taking necessary action is a matter for the religious bodies. The Buddhist Ecclesiastical Tribunals are **private in nature**, they are **not statutory bodies** but institutions set up by each Nikaya to regulate its own internal affairs.”

In the matter of an Application by Rev. Sumana Thero to be admitted and enrolled as an Attorney-at-Law 2005 (3) SLR 365, Samarakoon C.J (with Samarawickrama J, Walpita J and Gunasekera J agreeing) held that the Vinaya Pitakaya containing the rules and conduct of the Bhikkus are of a purely ecclesiastical nature and the Supreme Court has constantly held that, such matters are outside the pale of the civil law and cannot be entertained as legal disputes in Civil Courts.

In that case, Samarakoon C.J observed as follows,

“To say that the rules laid down by the Buddha for the discipline and personal conduct of his disciples is enforceable through civil courts by laymen as customary law, is abhorrent and should not rightly be entertained in any court.”

In the case of **Maha Nayaka Thero, Malwatte Vihare v Registrar-General 39 NLR 186**, in taking into consideration of Section 41(5) of the Buddhist Temporalities Ordinance, Soertsz J observed as follows:-

“All the Ordinance does is to invest the Maha Nayaka Thero and the Nayaka Thero of every Nikaya with the right and imposes upon them the duty to make all such corrections, additions or alterations as may be necessary to keep up to date their registers.”

With regard to the contention that this would amount to giving the two Theros referred to, arbitrary powers Soertsz J observed as follows:-

“It must be assumed that the Legislature was satisfied that ecclesiastical dignitaries of that eminence would act with a proper sense of responsibility. If, however, the Legislature did not intend to give the Maha Nayaka Thero and the Nayaka Thero such power, the remedy is surely in the hands of the Legislature.”

For the aforesaid reasons and the authorities cited above, it is abundantly clear that the decisions of the Mahanayaka Thero or Nayaka Thero of the Nikaya (Sect) acting under the provisions of Section 41(5) of the Buddhist Temporalities Ordinance of 1931 are not amenable to the writ jurisdiction of this court and this court cannot question the validity of those decisions.

However, when the arguments commenced the learned President’s Counsel for the Petitioner informed us that he is not seeking any relief against the Mahanayaka Thero. The Counsel informed us that he is confining his reliefs to the Paragraph (b) of the prayer to the Petition. The learned Additional Solicitor General for the 1st to 9th Respondents submitted that the Petitioner is attempting to do something indirectly which he cannot do directly. Without challenging the expulsion directly he is challenging with indirectly.

The role of the Commissioner General of Buddhist Affairs

The role of the Registrar-General – the predecessor in office of the present Commissioner General of Buddhist Affairs acting under the provisions of Section

41(5) of the Buddhist Temporalities Ordinance of 1931 was extensively discussed in the case of **Maha Nayaka Thero of Malwatte Viharaya v Registrar-General 39 NLR 186**.

In that case, the Mahanayaka Thero of the Malwatte Chapter wrote to the Registrar-General that he had removed one Ratanajothi Thero's name from his register and requested the Registrar-General to make the necessary modification under Section 41(5) of the Ordinance. This request was not complied with, a similar request was made subsequently with the same effect. Thereafter, the Mahanayaka Thero asked for a writ of mandamus on the Registrar-General. The Registrar-General refused to modify the register on the ground that the Ordinance does not contemplate expulsion from priesthood. It was held that the position taken up by the Registrar-General has no legal or logical justification.

It was held that the Registrar-General is under a legal duty under Section 41(5) of the Buddhist Temporalities Ordinance No. 19 of 1931 to remove the name of a Buddhist Priest from the register on being required to do so by the Mahanayaka on the ground that the priest has been expelled from the order.

Justice Soertsz observed as follows:-

"I am therefore of the opinion that if the matter stood in this position, and no other considerations arose, a clear case has been made out for the issue of a writ directing the Registrar-General to modify his register. It is a duty the statute casts upon him in **imperative terms**. It gives him **no discretion** and he is usurping functions he does not possess when he acts in the manner in which he acted in this case."

Therefore, the Commissioner General of Buddhist Affairs is performing a ministerial act when he is acting under Section 41(5) of the Buddhist Temporalities Ordinance. He has no discretion and he cannot question the validity of the decision of the Mahanayaka or the Sangha Sabha. The Commissioner-General is under a legal duty under Section 41(5) of the Ordinance to remove the name of a Buddhist Priest from the register on being required to do so by the Mahanayaka on the ground that the Priest has been expelled from the order or in other instances like this to make the necessary alterations.

The Petitioner has drawn our attention to the document marked P26 signed by the two Anunayakas of the Nikaya and the chief Lekhakadhikari of the Nikaya

which says that the 10th Respondent Mahanayaka Thero is weak and feeble and therefore is incapable of taking a decision on his own and had taken decisions succumbing to pressure from controlling Theros. Therefore, there had been an agreement to require the Mahanayaka Thero to issue letters only with the knowledge and understanding of either one of the Anunayaka Theros and the Chief Lekhakadhikari. Therefore, it is the case of the Petitioner that in view of the contents of the aforementioned document the Commissioner should not consider a letter sent by the Mahanayaka Thero unless the same is accompanied by evidence to show that the decision contained in the letter has been taken with the knowledge of one of the Anunayakas and the Lekhakadhikari of the Nikaya. The letter dated 25.07.2018 marked 1R2 (a) which contains the 1st request of the Mahanayaka Thero to alter the register which is in the custody of the Commissioner is supported by the letter marked 1R2 (b) by which the Chief Lekhakadhikari priest of the Nikaya and one of the Anunayaka Priests of the Nikaya had informed the Commissioner that the Mahanayaka Thero had signed the letter dated 25.07.2018 (1R2 (a)) with their knowledge. Both letters bear the same date. By the letter marked P25 the Chief Lekhakadhikari Priest and an Anunayaka Priest of the Nikaya has informed the Commissioner that the Mahanayaka Thero had signed the letter dated 13.08.2018 marked P24 containing the 2nd request of the Mahanayaka to alter the register, with their knowledge. Therefore, the Commissioner General of Buddhist Affairs had no difficulty in acting on those two letters sent by the Mahanayaka on that ground.

The learned counsel for the Petitioner has drawn our attention to the difference between the two letterheads P24 and 1R2 (a). Both are letterheads of the same "Sangha Sabhawa", yet there is a significant difference between the two letterheads. In the case of the letter marked 1R2 (a) and the letter 1R2 (b) both the Mahanayaka Thero and the other two priests had used the same letterhead. In the case of the letter marked P24 the Mahanayaka Thero had used a letterhead which is different to the letterhead in 1R2 (a). But in P25 the Anunayaka Thero and the Lekhakadhikari Thero of the Nikaya confirm that P24 was signed by the Mahanayaka Thero with their knowledge and in P25 the Anunayaka Thero and Lekhakadhikari Thero had used the same letterhead which was used by the Mahanayaka Thero in the earlier letter marked 1R2 (a). A person or a body of persons can have two different letterheads printed at two different times.

Therefore, the Commissioner General of Buddhist Affairs was justified in altering the register at the 1st request of the Mahanayaka Thero. The Mahanayaka Thero had altered his register earlier. He had notified the Commissioner about the alteration and the Commissioner was aware of the contents of the alteration. The Mahanayaka Thero had conveyed to the Commissioner the exact contents of the alteration. However, when the 2nd request to alter the register was made by the Mahanayaka Thero there was no evidence before the Commissioner that the register in the custody of the Mahanayaka Thero has been altered. The Mahanayaka Thero did not say that he altered his register. The Commissioner cannot make any alterations in his register until the Mahanayaka Thero alters his register. The Mahanayaka Thero has to alter his register first. If the Mahanayaka Thero had altered his register, he should inform the Commissioner what he has altered. The Commissioner should be aware of the alterations done by the Mahanayaka Thero because he has a duty to alter his register accordingly. The Commissioner is expected to make the same alteration done by the Mahanayaka Thero. The two alterations should be similar. In this case, when the Commissioner altered his register for the 2nd time there was no evidence before the Commissioner about the alterations (if any) done by the Mahanayaka Thero. Without knowing what alterations had been made by the Mahanayaka Thero and without knowing whether there had been an alteration in the register in the custody of the Mahanayaka Thero and without verifying whether an alteration had been made in the register in the custody of the Mahanayaka Thero and if so without verifying about the contents of the alteration, the Commissioner General of Buddhist Affairs had altered the register in his custody. This act of the Commissioner is clearly *ultra vires*.

For the aforementioned reasons, I issue a mandate in the nature of a Writ of Certiorari quashing the endorsement and/or alteration made by the 1st Respondent on 04.09.2018 on the declaration regarding Samaneras under section 41 of the Buddhist Temporalities Ordinance no. 19 of 1931 produced marked P21 to the following effect:- “වනවාස සංඝ සභාවෙන් ඉවත් කර අංක 89633 දරණ මෙම සාමනේර භික්ෂූන් පිලිබඳ ප්‍රකාශය අවලංගු කරන ලදී.”

Subject to the aforementioned limitation the application is allowed without costs.

Judge of the Court of Appeal

Mayadunne Corea – J

I Agree

Judge of the Court of Appeal