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

In the matter of an application in terms of Article 140 of the Constitution of Sri Lanka for mandates in the nature of Writs of Certiorari.

CA/WRIT/520/2021

Hitihami Mudiyanselage Ananda Dewa
Kumara Wannithilaka
Chandani,
Maspotha,
Kurunegala.

Petitioner

Vs.

1. Hon. Namal Rajapaksa
   Minister of Sports,
   No. 9,
   Philip Gunawardana Mawatha,
   Colombo 7.

1A. Hon. Roshan Ranasinghe
   Minister of Sports,
   No. 9,
   Philip Gunawardana Mawatha,
   Colombo 7.

2. Amal Edirisooriya
   Director General,
   Department of Sports Development,
   No. 9,
   Philip Gunawardana Mawatha,
   Colombo 7.

3. Anuradha Wijekoon
   Secretary, Ministry of Sports,
   No. 9,
   Philip Gunawardana Mawatha,
   Colombo 7.

4. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Murshid Maharoof with Githme Senanayake for the Petitioner.

Sumathi Dharamawardena PC, ASG for the 2nd Respondent.

Supported on : 18.10.2022

Decided on : 09.12.2022

Sobhitha Rajakaruna J.

The Petitioner being a National Volleyball player has held several positions relating to the functions of the Sri Lanka Volleyball Federation including the post of National Volleyball Coach.

The Petitioner has toured Japan in 1995 with the Sri Lanka Men's National Volleyball team as a coach and evaded returning to Sri Lanka. As a result of such conduct, the Sri Lanka Volleyball Federation ('Federation') has suspended the Petitioner from taking part and/or getting involved in any activities of the Federation.

In 1999, upon the arrival to Sri Lanka, the Petitioner has made an appeal to the Federation against the said decision of suspension. Consequently, the Federation has taken a decision to remove the Petitioner's suspension with effect from 31.03.2004 (Vide-'P2') and thereafter, he continued to serve as a coach under the Federation for few years.

In the meantime, the Minster of Sports has published the Gazette Extraordinary Notification No. 1990/23 dated 27.10.2016 ('P8'). The clause 4(s) of Part II of the said Gazette Notification reads;

'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:-

(s) he being a person who represented the country in an international sports event with the approval or concurrence of the Minister of Sports for an activity related to sports and had not returned to Sri Lanka;'

The contention of the Petitioner is that the disqualification set out in the Gazette Notification 'P8' has no bearing on the Petitioner as those regulations were published after he returned from Japan. Anyhow, the Federation referring to the desertion of the team during the tour to Japan, informed the Petitioner by letter dated 25.04.2017, marked 'P10', that the Petitioner had acted in contrary to clause 4(s) of Part II of the 'P8' and thereby he would not be entitled to apply to the post of a coach of any National team with effect from 25.04.2017.

Subsequently, upon such decision of the Federation, the Petitioner made an appeal to the Minster of Sports by way of letter dated 07.01.2021, marked 'P11'. The Appeal made by the Petitioner has been rejected on the basis that the Appeal Committee was not empowered to examine the same in terms of the Sports Regulations as it had been lodged against a decision taken almost 4 years ago. The rejection of the Appeal has been communicated to the Petitioner by the impugned letter dated 08.02.2021 and letter dated 15.03.2021, marked 'P12' & 'P13' respectively.

The Petitioner claims that the said letters marked 'P12' and 'P13' are ultra vires, arbitrary and violative of his legitimate expectation of fair and transparent hearing and he seeks, inter alia, for a writ of Certiorari to quash the decisions reflected in 'P12' and 'P13'.

The Respondents raised the following two preliminary objections when the instant application was taken up in this Court for support;

i. Petitioner is guilty of laches
ii. necessary parties are not before Court as the Federation has not been made a party

I must draw my attention now to the relevant law in regard to appeals made by aggrieved parties of sports bodies. The Section 30 of Sports Law No. 25 of 1973;

> 'Any person who is aggrieved by any decision or action of a registered National Association of Sports may, in accordance with the succeeding provisions of this Law, appeal to the Minister against such decision or action and the Minister's decision on such appeal shall be final and conclusive and shall not be questioned in any court of law.'

The Clause 8(1) of Part IV of the Regulations, marked 'P8', deals with the procedure in appealing against decisions or actions of a National Association of Sports. The Clause 8(1):

> 'Any person who is aggrieved by any decision or action of a registered National Association of Sports may, appeal to the Minister **within two weeks** from the date of communication of such decision or action.' (Emphasis added).

On perusal of the documents tendered to Court, it implies that the Petitioner has submitted an Appeal against the decision reflected in 'P10' almost after four years. The decision upon which the Petitioner submitted an appeal was given in year 2017. This clearly shows that the Petitioner has lodged an appeal out of time. Moreover, as pointed out by the Respondents, the Petitioner has failed to make the Federation a party in the instant Application. The established law relating to judicial review requires that those who would be affected by the outcome of the writ application should be made Respondents. The general rule is that when the decision given by the Appellate body is being challenged, the parties to the original dispute should be made Respondents. In the circumstances, I am of the view that the there is no merit in the arguments of the Petitioner raised in the instant Application.

For completeness, I must advert to the assertions of the Petitioner that the Clause 4(s) of the Regulations has no bearing on the Petitioner. The Regulations, marked 'P8', under Sports Law has been published in the year 2016. The argument of the Petitioner is that he has already been punished for not returning from Japan and it was based on an incident before 2016; and thus, the Clause 4(s) of 'P8' is not applicable to him. I am unable to accept such assertions as the Federation has imposed a punishment previously against the Petitioner after identifying a misconduct identical to the misconduct or offence recognized in the said Clause 4(s). It is admitted that the Petitioner has undergone a punishment as

mentioned earlier for his misconduct of deserting the National Team and not returning to Sri Lanka after the Tour, although such punishment has been relaxed later on. This reflects that the said misconduct of the Petitioner has become a purported offence not only by operation of Clause 4(s) but even in the year 1995 (during the tour to Japan) such conduct was in the nature of an offence.

Hence, it cannot be assumed that the effect of such Clause 4(s) tends to disregard an identical misconduct or an offence (described in the said clause) upon which a punishment has been imposed before 2016 (probably in the year 1998). I am mindful of the principles relating to retrospective effect upon laws. When interpreting the Clause 4(s), I take the view that the respective misconduct, which has been identified even before 2016 as a misconduct or an offence committed at that time, cannot be possibly overlooked for the purpose of Clause 4(s) and it will not affect the principles on retrospective laws.

The other argument advanced by the Petitioner that the said Clause 4(s) is applicable only to the members of the Sports Association, also cannot be accepted as there is no adequate material submitted by the Petitioner to establish, prima facie, that he was not holding any paid or unpaid office, a category which clearly comes within the purview of the above Clause 4. By plain reading of the said Clause, it clearly envisages that a post of coach comes within the definition of "paid or unpaid office/post".

Additionally, the Petitioner contends that the Minister's approval was not a necessity for him to tour Japan in 1995 and thereby, the Regulations discussed above are not applicable to him. The purported basis for such argument is that although the words 'approval or the concurrence of the Minister' is embodied in said Clause 4(s), the Petitioner's tour to Japan has been approved not by the Minister but by the North Western Provincial Council. I am not inclined to examine such assertions as the Petitioner admittedly underwent the punishment imposed in reference to the Japan tour and such decision for punishment had not been challenged in a court of law. The concession provided subsequently by the Federation in respect of the said punishment would not negate this position. Anyhow, the Petitioner has categorically submitted in the instant application that he is challenging only the decisions reflected in 'P12' and 'P13'.

In passing, I comment that there cannot be any compromise on any act or misconduct which brings disrepute to the motherland when you represent the country as a team or as

an individual in a foreign nation. Discipline in every aspect is the foundation for any sport as the level of success is mostly determined by your level of discipline.

In the circumstances and based on the above reasons, I am compelled to reject the contention of the Petitioner that the impugned orders are ultra vires and illegal. Therefore, this Court takes the view that the Petitioner has not submitted a prima facie case on an arguable question which warrants this Court to issue formal notice on the Respondents.

Application is refused.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal