

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

CA/WRIT/45/2022

1. Nagananda Kodithuwakku
Maha Lekam,
Vinivida Padanama,
99, Subadrarama Road,
Nugegoda.

Petitioner

Vs.

1. Dinesh Gunawardena
Minister of Education,
Ministry of Education
Isurupaya,
Battaramulla.
2. Kapila Perera
Secretary,
Ministry of Education,
Isurupaya,
Battaramulla.
3. Sunil J. Nawaratna
Director General,
National Institute of Education,
P.O Box 21,
Highlevel Road, Maharagama.
4. L.M.D. Dharmasena
Commissioner General Examination,
Examinations Department,
Pelawatta, Battaramulla.

Respondents

Before : Sobhitha Rajakaruna J.

Counsel : Chrishmal Warnasuriya instructed by Sanjaya Edirisinghe for the Interventient Petitioners.

Wardani Karunaratne with Dushantha Kularatne and P.B. Herath instructed by M.I.M Iynullah for the Interventient Petitioners

Dr. Charuka Ekanayake, SC for the Hon. AG

Supported on : 03.02.2022

Decided on : 03.02.2022

Sobhitha Rajakaruna J.

ORDER ON ISSUANCE OF NOTICE

The Petitioner is heard in support of this application. Two intervenient parties have also filed two separate applications seeking to intervene in this matter. The party sought to be intervened in the intervention Petition dated 01.02.2022 is a student who is going to sit at the forthcoming G.C.E. (Advanced Level) Examination. The party sought to be intervened in the intervention Petition dated 03.02.2022 is also a student who is going to sit at the same examination and her mother.

It appears these Interventient Petitioners have prima facie, sufficient interest in the matter impugned in as much as Interventient Petitioners are the students who are sitting at the forthcoming G.C.E. (Advanced Level) Examination. Further, it appears prima facie that they are directly affected by the application of the Petitioner and the interim order sought by the Petitioner. Therefore, the Court is of the view that the submissions of the Interventient Petitioners also should be heard in view of making an order on issuance of notice and the interim relief.

The learned Counsel Mr. Chrishmal Warnasuriya who appears for one of the Interventient Petitioners brings to the notice of this Court the provisions of Rule No. 70 of Supreme Court Rules. The said Rule No. 70 stipulates that; 'No person who has not been duly admitted and enrolled as an Attorney-at-law or who has been suspended from practice or removed from office after having been so admitted and enrolled shall be allowed to assist

and advice or to appear, plead or act for or on behalf of clients in any Court or other institutions established by law for the administration of Justice.’ Mr. Warnasuriya drew the attention of the Court to the averments of paragraph 1 of the Petition of the Petitioner and submits that the Petitioner is not entitled to file and maintain this application as the Petitioner represents as an Attorney-at-Law. Upon an inquiry by the Court Mr. Nagananda Kodithuwakku informs Court that the Supreme Court has suspended him from practicing as an Attorney-at-Law until 15th March 2022.

Despite of the fact that Mr. Warnasuriya raising the above objection, I now advert to the question as to whether notice should be issued or not on the Respondents in this application. The Petitioner has filed this application seeking, inter alia, for a mandate in the nature of a writ of Certiorari to quash the time table marked ‘X3’ of the G.C.E (Advanced Level) Examination 2021 (2022). Furthermore, the Petitioner seek for a mandate in the nature of a writ of Mandamus compelling the 1st and 2nd Respondents to provide a period of 20 weeks prior to the commencement of the said Examination as per the purported recommendation of the 3rd Respondent.

I have extensively discussed the principles that needs to be adopted by a judge who is granting permission in view of satisfying himself that there is a proper basis for judicial review in *Prof. Harendra de Silva & others vs. Hon. Pavithra Wanniarachchi, Minister of Health & others CA Writ 422/2020 decided on 01.02.2022*. The judge who is granting permission needs to be satisfied that there is a proper basis for claiming judicial review and it is wrong to grant permission without identifying an appropriate question on which the case can properly proceed.

In the case of judicial review, the question before Court is whether a decision or order is lawful, that is according to law. Further, under judicial review this Court, unless there is an obvious error in law on the face of the record, will not overturn the decision on merits. The Petitioner based on the provisions of Articles 4(d), 27(2), 27(3) and 28 of the Constitution submits that the Respondents are bound to provide necessary period of time to get ready for a public examination. The Petitioner’s contention is that the decision of the Respondents to conduct the above examination commencing from 07.02.2022 is absolutely a violation of the right to education and denial of the students’ right to education.

This is not an application filed under Article 126 of the Constitution. Judicial review is about the decision-making process, not the decision itself. The role of this Court in judicial review is supervisory. Therefore, it is not for this Court to consider whether the decision of the public authority is right or wrong but the role of this Court is to consider whether the public authority has exceeded their powers. The Court cannot be the judge of giving directions to a Government, intervening to the role of ruling the country.

I observe that no sufficient material has been submitted by the Petitioner in order to challenge the vires of the legal authority. In *Namunukula Plantations Limited vs. Minister of Lands & 6 others 2012 1 SLR 365 (at p.378)* Saleem Marsoof PC. J. held that;

'If any party invoking the discretionary jurisdiction of a Court of Law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person.'

The Supreme Court further mentioned that the Court of Appeal would have refused even the issue of notice on the Respondents, saving them the time and money expended on defending the said application.

Therefore, I arrive at the conclusion that there is no arguable case which comes within the purview of the jurisdiction of this Court in respect of a judicial review application. I have come to the above conclusion on a careful consideration of the whole matter and by reasons of special circumstances of this case. Hence, I proceed to refuse this application exercising my discretion.

Judge of the Court of Appeal