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

In the matter of an application for restitutio in integrum/revision under Article 138 of the Constitution of the Republic of Sri Lanka.

Teejay Lanka PLC, Block D8 – D14, Seethawaka Export Processing Zone, Industrial Park, Avissawella.

Intervenient-Petitioner

CA. WRT Application No. : CA/WRT/0349/2020

Vs

1. Center for Environmental Justice (Guarantee Limited), No. 20/A, Kuruppu Road, Colombo 08.
   And Another

Petitioner-Respondents

1. Marine Environment Protection Authority, No. 177, Nawala Road, Colombo 05.

   And 07 Others

Respondent-Respondents

Before: Hon. D.N. Samarakoon, J

Hon. Sasi Mahendran, J.

Counsel : Mr. Ravindranath Dabare with Mr. N. Wickramasinghe, Mr. S. Ponnamperuma instructed by Ms. Samadhi Hansani Premasiri for the Petitioner-Respondents.

Mr. Kalinga Indatissa, PC., with Mahesh Senevirathne instructed by Mr. F.J. & G. De Seram for the Intervenient-Petitioner.

Mr. Neville Abeyrathne, PC., with Mr. Ravindu Heiyantuduwa for the 7th Respondent.

Mr. N. Kahawita for the 6th and 7th Respondents.

Mr. Farman Cassim, PC., with Mr. Mithum Imbulamure instructed by Ms. Leena Weerakkodi for the 6th Respondent.

Argued on: 01.02.2022

Written submissions tendered on: On 23.02.2022 by Intervenient Petitioner

On 10.02.2022 by Petitioner

Decided on: 29.03.2022

D. N. Samarakoon, J.

When this matter came in the open court on 01st February 2022 Teejay Lanka PLC, made an application to intervene into the writ application pending before the petitioner and 08 respondents.

(1) <u>The petitioner's objection:</u>

The petitioner has objected to this application on the basis of the decisions in **C.A. Writ Application No. 187/2016**[1] decided on 15.10.2016 and **C.A. Writ Application No. 586/2007**[2] decided on 22.11.2011, both decided in the Court of Appeal, the latter being decided by a bench of three judges.

The perusal of the order in **CA Writ 187/2016** shows that it merely followed the decision in **CA Writ 586/2007**. It said at page 13,

> "After consideration of the relevant judgments the said divisional bench of this court has held that the Court of Appeal Rules 1990 do not provide for third party interventions in applications for prerogative writs".

It further said at the same page,

> "Thus this court is not in a position at this moment to entertain any of these applications by third parties for intervention in this proceedings since this is a proceeding with regard to an application for prerogative writs".

However, the court said at page 12,

> "The parties who have filed written submissions to substantiate the respective positions taken up by them have relied on number of case laws. Out of the judgments cited by parties some support the view that an application for intervention in a writ application could be considered, while the others support the view that such an application for intervention in a writ application is not possible".

But the court in CA Writ 187/2016 elected to follow the decision in CA Writ 586/2007.

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[1] Dhilmi Kasunda Malshani Suriyarachchi vs. Sri Lanka Medical Council and another.

[2] Chitra Weerakoon and another vs. Bandaragama Pradeshiya Sabhawa.

The order in CA Writ 586/2007 has been written by W.L.R. Silva J., in the Court of Appeal (with the concurrence of Justices A.W.A. Salam and D.S.C. Lecamwasam)

(2) <u>The judgments considered in C.A. Writ 586/2007:</u>

It considered the judgments given below in arriving at its decision that intervention cannot be allowed.

(1) M.D. Chandrasena and two others vs. S.F. de Silva 63 NLR 143, decided by Tambiah J.,
(2) Harold Peter Fernando vs. The Divisional Secretary of Hanguranketha and two others 2005 BLR 120, decided by Saleem Marsoof J. (in which Tambiah J's judgment was followed) and
(3) Tyre House (Pvt) Ltd. vs. Director General Customs CA Application No. 730/95 CA minutes dated 05.06.1996, decided by Dr. Ranaraja J.,

in favour of the proposition that intervention cannot be allowed.

It also considered the judgments given below,

(1) Mahanayake thero, Malwatte Vihare vs. Registrar General et al (1937) 39 NLR 186, decided by Soertsz J.,
(2) Government School Dental Therapists Association et al vs. George Fernando, Director General of Health Services CA Writ 861/1993 decided by Ameer Ismail J.,
(3) Jetwing Hotel Management Service (Pvt) Ltd. vs. Securities and Exchange Commission and others CA Writ 293/2009, decided by Sathya Hettige J. and
(4) Jayawardane vs. Minister of Health and others CA Writ 978/2008, decided by Anil Goonaratne J., (with Sathya Hettige J., agreeing)

in favour of the proposition that intervention could be allowed.

CA Writ 586/2007 decided that the last two mentioned cases by Sathya Hettige J. and Anil Goonaratne J., have been decided per incuriam.

In CA Writ 586/2007 W.L.R. Silva J., said at page 07-08,

> "As the counsel for the intervenient petitioner in support of his application for intervention has cited several judgments it is necessary for me to deal with those authorities relied on by the intervenient petitioner. Sathya Hettige J., in the case of Jetwing Hotel Management Services (Pvt) Ltd. vs Securities and Exchange Commission and others CA Writ Application No. 293/2009 decided on 31.05.2010 opted to follow the judgment of Anil Goonaratne J. (with Sathya Hettige J., agreeing) in Jayawardane vs. Minister of Health and others CA Writ Application No. 978/2008 dated 21.05.2009. It appears both the judgment above cited by the intervenient petitioner had been decided per incuriam".

His lordship further said at page 08-09,

> "In Jayawardane vs. Minister of Heath and others the court had totally failed to consider and had been oblivious to the Supreme Court rules. In that judgment Anil Goonaratne J., had been oblivious to the judgment in M.D. Chandrasena and two others vs. S.F. de Silva a judgment delivered by the Supreme Court. His Lordship did not assign any reasons for not following the binding judgment of the Supreme Court in the said case which is totally repugnant to the principles of stare decisis. The judgment in Harold Peter Fernando vs. The Divisional Secretary of Hanguranketha and others had not been even cited in that case let alone considering the judgment. The judgment in Tyre House (Pvt) Ltd. vs. Director General of Customs CA Application No. 730/95 CA minutes dated 05.06.1996 was not even referred by the parties in the said case and the court has not considered that judgment either.

> Therefore I hold that the judgment in Jayawardane vs. Minister of Health and others is a judgment decided per incuriam that is forgetfulness of judicial authorities that were in full force at the time. The only issue that had been in contemplation and that had been decided by Anil Goonaratne J., appears to me, was whether the intervenient was a necessary party. With respect to their Lordships who decided that case I must state the court had not even cared to consider the Supreme Court rules, in order to ascertain whether there was a single rule that permitted the intervention of parties in writ matters. The broader construction given to section 18 of the Civil Procedure Code with regard to intervention and necessary parties in civil matters where a district court could decide on the facts and circumstances as to the competing rights of the parties under Article 134(2) or 134(3) of the Constitution, has no place in writ matters because in a writ application the Court of Appeal or the High Court, as the case may be, is strictly prohibited from deciding on controversial issues".

Thus Justice W.L.R. Silva basically decided on two things,

(i) That the judgments decided by Sathya Hettiga J. and Anil Goonaratne J., violated the rule of stare decisis, and

(ii) That the said judgments did not consider that in a writ application a court does not decide on disputed questions of fact and hence there are no necessary parties for complete adjudication of disputes

One case Justice W.L.R. Silva said was not followed is Harold Peter Fernando vs. The Divisional Secretary of Hanguranketha and two others decided by Saleem Marsoof J.

W.L.R. Silva J., himself said at page 04-05,

"In the case of Harold Peter Fernando vs. The Divisional Secretary of Hanguranketha and two others reported in 2005 BLR at page 120 Saleem Marsoof J., citing with approval the judgment of Dr. H.W. Thambiah J., in M.D. Chandrasena and two others vs. S.F. De Silva held inter alia that,

(1) The Court of Appeal (Appellate Procedure) rules, 1990 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka setting out the procedure to be followed by this court in dealing with applications inter alia for prerogative writs, do not provide for third party interventions in the proceedings,

(2) There is no corresponding provision in the Constitution or any other law seeking to confer on a third party of audience in the Court of Appeal in the lines of Article 134(3) of the Constitution, as it illustrates the restraint that is exercised by the apex court of the country in dealing with applications for third party intervention in the context of supervisory jurisdiction of court which is exercised with the view to keeping administrative authorities within their lawful bounds".

Hence Saleem Marsoof J., also based his lordship's decision on,

(a) The absence of a Court of Appeal rule permitting intervention and,

(b) The absence of a provision in the Constitution or any other law permitting intervention in the context of a supervisory jurisdiction

Justice W.L.R. Silva also said at page 05-06,

"Dr. Ranarajah J., in Tyre House (Pvt) Ltd. vs, Director General of Customs CA Application No. 730/95 CA minutes dated 05.06.1996 held that intervention cannot be allowed in writ applications in the absence of specific rules formulated by the Supreme Court providing for the procedure permitting third parties to intervene in writ applications. In the course of his judgment Dr. Ranarajah J., observed that what the intervenients were seeking was to prevent the relief sought by the

petitioner being granted. Thus they have no common interest with the petitioner and can in no way be considered as aggrieved persons who have an interest in preventing the abuse of power by the Director General of Customs, as alleged by the petitioner it is the respondent and he alone who said that he acted within the law and its decision sought to be quashed is valid in law. Court cannot permit outsiders to offer him moral support or cheer him along in his battle with the petitioner. Such a course would not have strengthened the case for the petitioner and the respondent acted the way he did for extraneous reasons and therefore mala fide. It is significant to note that his lordship Dr. Ranarajah did not follow the liberal view expressed by Ameer Ismail J., in the case of Government School Dental Therapists Association vs. George Fernando Director General of Health Services CA Writ Application 861/1993".

Thus, Dr. Ranarajah J., based his judgment on,

(a) The absence of a specific rule formulated by the Supreme Court and,
(b) The intervenient does not having a common interest with the petitioner

His lordship also did not follow the judgment of Ameer Ismail J.

Hence it appears that Saleem Marsoof J. and Dr. Ranarajah J., goes to a common root with M.D. Chandrasena and two others vs. S.F. De Silva decided by Tambiah J., in 1961.

(3) <u>The value of M.D. Chandrasena and two others vs. S.F. de Silva for stare decisis:</u>

This was a Supreme Court decision, as referred to by W.L.R. Silva J. where Tambiah J., was sitting alone. Due to the existence of the Privy Council then as the highest court, the binding authority of a judgment in the then Supreme Court is similar to a judgment of the Court of Appeal in today's context.

The learned Chief Justice, who wrote the leading judgment of the majority in **Vinayagam Ganeshananthem vs. Vivionne Gunawardane 1984** said,

> "He submits that this caption read with prayer (a) to the petition invokes a jurisdiction in revision which this Court does not have. One has to look at the legislation which created this Court to find an answer to this dispute. That legislation is to be found in the second Republican Constitution of 1978. **The Supreme Court which existed up to the time of the first Republican Constitution of 1972 and which continued to exist under that Constitution ceased to exist when the 1978 Constitution became operative.** (Vide Article 105 (2) of the Constitution). **Its place was taken by the Court of Appeal** (Vide Article 169 (2) of the 1978 Constitution). A new Supreme Court has been constituted which is the highest and final Superior Court of Record. (Article 118 of the Constitution)."

Hence the judgment in M.D. Chandrasena and two others vs. S.F. de Silva is that of a judgment of the Court of Appeal in the present context.

(4) <u>The judgment in M.D. Chandrasena and two others vs. S.F. de Silva:</u>

The relevant portions of the judgment of Tambiah J., said,

> "When these applications were taken up for hearing, Mr. C.D.S. Siriwardane stated that he was appearing for an intervenient who wished to be heard in these applications. He also stated that he desired to place certain facts before the Court. In support of the intervention he contended that, in matters of this kind, the English common law would apply and cited the following dictum of Lord Radcliffe in Nakkuda Ali vs. Jayaratne (Controller of Textiles) [(1950) 51 NLR at pp. 460-461] "Moreover there can be no alternative to the view that when section 42 (of the Courts Ordinance) gives power to issue these mandates "according to law" it is the relevant rules of the English common law that must be

resorted to in order to ascertain in what circumstances and under what conditions the court may be moved for the issue of a prerogative writ. These rules then must themselves guide the practice of the Supreme Court in Ceylon".

"Mr. H.V. Perera Q.C., who appeared for the petitioner, contended that the dictum did not go to the extent of stating that the procedure applicable under the English common law should apply to Writs in the nature of Mandamus and Certiorari in Ceylon. It seems to me that the English common law has been adopted by our courts to determine the principles that should guide the court in either granting or refusing these writs. It has never been the practice of this Court to allow person other than those who are parties to the application for writs to intervene in the proceedings. Learned Counsel for the intervenient was unable to cite any judicial decision which has recognized the principle that under the English common law an intervenient may appear in such applications".

Tambiah J., further said,

"Further ***I am reluctant to allow this intervention for the additional reason that the recognition of such a principle would open the floodgates***, as it were, to a torrent of similar applications and thus impede the functioning of the Courts".

This shows that Justice Tambiah had other reasons also for not allowing the application for intervention, other than the absence of any English authority on intervention.

However, Justice Tambiah did not completely shut out the intervenient from participating for his lordship said,

"Hence the application to intervene in these proceedings and file affidavits is refused. However this order will not prevent Mr. Siriwardene being heard as

amicus curiae on any question of law that may arise, on which his assistance may be required".

(5) <u>More was said in Nakkuda Ali vs. M.F. de S. Jayaratne:</u>

The judgment (or the order) of Tambiah J., is a brief one. In fact what was reproduced above contains most of the order. One thing that appears is that in the passage his lordship quoted from the dicta of Lord Radcliffe in Nakkuda Ali vs. Jayarathne, more has been said. To reproduce it in full (the relevant portion) is as below,

> "There is nothing in the Roman-Dutch law or the law of Ceylon that corresponds to the "writs of mandamus, quo warranto, certiorari, procedendo and prohibition". It seems obvious, therefore, that the jurisdiction of the Supreme Court to grant and issue mandates in the nature of such writs is derived exclusively from section 42 and was conferred originally upon that Court by the legislative predecessor of that section. **The range of the jurisdiction must be found within the words of the statutory grant. Those words describe the permissible subject of the Court's mandate as being "any District Judge, Commissioner, Magistrate or other person or tribunal". The respondent contends that he is not an "other person or tribunal" within the meaning of those words, since their collocation with the words "District Judge, Commissioner, Magistrate" indicates that they extend only to tribunals (or persons acting as tribunals) which are in the ordinary sense established judicial bodies and he reinforces his argument by pointing out that section 42 confers a number of powers in series, the power in question being preceded by a power to inspect and examine the records of any Court and being succeeded by a power to transfer cases from one Court to another.** Hence, he argues, the range of persons or tribunals that are subject to the Court's mandate under

section 42 is more limited than that which is encompassed by the common law of England and is confined to persons who are ejusdem generis with District Courts, Magistrates or Commissioners.

Their Lordships agree with the decision of the Full Bench on this point. It is not necessary to add to their reasons. The reference to the writs of mandamus and quo warranto certainly makes it difficult to suppose that only Courts of Justices as ordinarily understood are to be subject to these mandates. **Moreover there can be no alternative to the view that when section 42 gives power to issue these mandates "according to law" it is the relevant rules of English common law that must be resorted to in order to ascertain in what circumstances and under what conditions the Court, may be moved for the issue of a prerogative writ. These rules then must themselves guide the practice of the Supreme Court of Ceylon. But even in the cases of certiorari and prohibition the English law does not recognize any distinction for this purpose between the regularly constituted judicial tribunals and bodies which, while not existing primarily for the discharge of judicial functions, yet have to act analogously to a judge in respect of certain of their duties. The writ of certiorari has been issued to the latter since such ancient times that the power to do so has long been an integral part of the Court's jurisdiction.** In truth the only relevant criterion by English law is not the general status of the person or body of persons by whom the impugned decision is made but the nature of the process by which he or they are empowered to arrive at their decision. When it is a judicial process or a process analogous to the judicial, certiorari can be granted. If these rules are borne in mind with respect to the phrase "according to law" the limited construction of section 42 for which the respondent contends is not only one which it is very difficult to express in precise words but one which is

based ON an altogether different conception from that which has guided the development of the English practice".

Hence in the second part of the "bold" highlighted portion, the Privy Council, sought to define the phrase "***according to law***" as meaning that the rules of English common law will apply, ***on a question of "standing***", although it is not of the petitioner but of the respondent (whether the respondent comes within the term an "other person or tribunal") referred to in the highlighted portion of the first part. ***It appears to this court, for reasons that will be adduced hereinafter, that a person's entitlement to intervene also depends on his "standing" and therefore for that question also the rules of English common law must apply***.

Wade and Forsyth says in "**Administrative Law**" 09th Edition (2005) at page 692, discussing **Rex. Vs. Inland Revenue Commissioners ex parte National Federation of Self Employed and Small Businesses Ltd., [1982] AC 617**,

> "The testing of an applicant's standing is thus made a two stage process. On the application for leave (stage one) the test is designed to turn away hopeless or meddlesome applications only. But when the matter comes to be argued (stage two), the test is whether the applicant can show a strong enough case on the merits, judged in relation to his own concern with it. As Lord Scarman put it: "The federation having failed to show any grounds for believing that the revenue has failed to do its statutory duty, have not, in my view, shown an interest sufficient in law to justify any further proceedings by the court on its application". He added that had reasonable grounds for supposing an abuse been shown, he would have agreed that the federation had shown a sufficient interest to proceed further.
>
> The novel aspect of the second stage test, as thus formulated, is that it does not appear to be a test of standing but rather a test of the merits of

the complaint. The essence of standing, as a distinct concept, is that an applicant with a good case on the merits may have insufficient interest to be allowed to pursue it. The House of Lords' new criterion would seem virtually to abolish the requirement of standing in this sense. However remote the applicant's interest, even if he is merely one taxpayer objecting to the assessment of another, he may still succeed if he shows a clear case of default or abuse. The law will now focus upon public policy rather than private interest.

Another though minor curiosity is that the House of Lords repeatedly spoke of the formula of Order 53 (a sufficient interest in the matter to which the application relates) as the second stage test whereas the Order makes it the first stage test. Since they are substantially different tests, the same formula will hardly do for both. This may be another indication that the second stage test is not in fact based upon a distinct concept of standing. That again is tantamount to saying that standing has been abolished as a restrictive principle of public law".

Wade and Forsyth referring in the aforequoted passage to an "***applicant***" instead of a "petitioner" or a "claimant" as it is often referred to in England is material. An intervenient is also an "***applicant***". Hence what is said in the said passage will apply in full force to an intervenient too.

Wade and Forsyth also referred to "Uniformity of rules under Order 53" at page 694 and said,

"The House of Lords has made it clear that Order 53 signalises a rationalizing and simplifying of the tangle of different rules which used to complicate the subject of remedies. The changes were as Lord Roskill said, "intended to be far reaching". He continued,

"They were designed to stop the technical procedural arguments which had too often arisen and thus marred the true

administration of justice, whether a particular applicant had pursued his claim for relief correctly, whether he should have sought mandamus rather than certiorari, or certiorari rather than mandamus, whether an injunction or prohibition, or prohibition rather than an injunction, or whether relief by way of declaration should have been sought rather than relief by way of prerogative order. All these and like technical niceties were to be things of the past. All relevant relief could be claimed under the head of "judicial review" and the form of judicial review sought or granted (if at all) was to be entirely flexible according to the needs of the particular case. The claims for relief could be cumulative or alternative under rule 2 as might be most appropriate".

Not all the law lords were willing to go so far and to hold that the old technical rules could now be forgotten and as already mentioned it is probably premature to treat them merely as history. There was a similar difference of opinion as to the discretion which the court may exercise. ***But the House of Lords is clearly now determined to prevent technicalities from impending judicial review so as to protect illegalities and derelictions committed by public authorities. The law about standing has moved forward and the more progressive interpretations of it are probably the more likely to prove right in the future***".

It is to be noted, that in Nakkuda Ali vs. M.F. de S. Jayaratne, the Privy Council also said, as it was referred to hereinbefore,

"In truth the only relevant criterion by English law is not the general status of the person or body of persons by whom the impugned decision is made but **the nature of the process** by which he or they are

empowered to arrive at their decision. When it is **a judicial process or a process analogous to the judicial**, certiorari can be granted".

It is said that the court in a writ application is concerned only with the process of decision making and not the correctness of the decision. Then what is the judicial process? It includes a free flow of information (*epitomized in the maxim audi alteram partem*) and an unfettered ability of decision making (*epitomized in the maxim Nemo judex in causa sua*) and also a logical connection between the input and the output, which is *reason*.

Wade and Forsyth say about "Fair Hearing – General Aspects" at page 507,

> "But in principle it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudged unfairly. Lord Wright once said[3]:
>
> > If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision.
>
> The dangers were vividly expressed by Megarry J., criticizing the contention that "the result is obvious from the start[4]":
>
> > As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change".

In the same page, it was said,

[3] General Medical Council vs. Spackman [1943] AC 629 at 644.
[4] John vs Rees [1970] Ch. 345 at 402.

"The argument that it would not have made any difference "is to be treated with great caution. Down that slippery slope lies the way to dictatorship".

***The contention of this court, then, is that, if the decision maker is bound to hear all parties and to consider everything, why not the same applicable to the reviewing court, which looks at the correctness of the process of decision making*?**

The intervenient petitioner in this application has said in its written submissions, that its name is mentioned several times under the sub heading "The Subject Matter of this Application".

It is also submitted that the relief sought by the petitioner has an impact in view of the prayers to the petition,

(c) Grant an issue an order in the nature of a writ of mandamus directing and or compelling the 8th respondent to indict the perpetrators under the Marine Polution Prevention Act No. 35 of 2008,

(d) Grant an issue an order in the nature of a writ of mandamus directing and or compelling the 4th and 5th respondents to conduct an independent investigation into the said matter without any unreasonable delay and apprehend all parties involved,

(e) Grant an order in the nature of a writ of certiorari quashing the approval issued by the 3rd respondent without consultation with and after having obtained the concurrence of the Central Environmental Authority to the Teejay Lanka PLC or the transportation and disposal of waste marked "P.10".

***This shows that the intervenient petitioner is not only a party affected, but also a party to be heard in coming to a decision on the legality of the process of decision making*.**

(6) <u>There being no rule permitting intervention:</u>

Furthermore, it has been argued that there is no rule permitting intervention. In this regard it is pertinent to note that there are instances where the courts have decided that it is not mandatory to follow a rule even when a rule exists.

In **Kiriwanthe and another vs. Nawarathne and another, 1989**, A. de Z. Gunewardane J., in the Court of Appeal dismissed a revision application on the basis of preliminary objections, one objection being that there is no compliance with Rule No. 46 of the Supreme Court. The court held that,

> "that the observance of Rule 46 is mandatory and the failure on the part of the petitioners to comply with the said Rule is a fatal irregularity, which would disable the petitioners from maintaining this application".

But in the Supreme Court, in **Kiriwanthe and another vs. Nawarathne and another, 1990,** Mark Fernando J., (with the concurrence of Kulathunga J. and Deeraratne J.) changed this decision. Fernando J., held,

> "The consequence of noncompliance (by reason of impossibility or for any other reason) is a matter falling within the discretion of the Court, to be exercised after considering the nature of the default, as well as the execuse or explanation therefor, in the context of the object of the particular Rule".

His Lordship decided,

"For these reasons, I allow the appeal, and set aside the judgment and order of the Court of Appeal, with costs in a sum of Rs. 2,500 payable by the 2nd Respondent to the Petitioners-Appellants. The Court of Appeal is directed to hear and determine the Petitioners" application on the merits".

The intervenient petitioner has also submitted that in **Hurro Chunder Chowdrey et al vs. Schoorodhonee Debia (1868) 9 W.R. 402 at 408** it was decided that,

"Since laws are general rules they cannot regulate for all the time to come so as to make express provisions against all the cases that may possible happen. It is the duty of a law gives to foresee only the most natural and ordinary events and to form his disposition in such a manner as that without entering into the detail of singular cases he may establish rules common to them all and it is the duty of judges to apply the law not only to what appears to be regulated by their express dispositions but to all the cases to which a just application of them may be made and which appears to be comprehended either within the express sense of the law, or within the consequence that may be gathered from it".

It is to be noted, that in **Government School Dental Therapist Association vs. George Fernando, Director General of Health Services, C.A. Writ 861/1993**, Ameer Ismail J., where His Lordship considered the judgment of Tambiah J., in Chandrasena vs. S.F. de Silva, 1961, but allowed the intervention also referring to the rules said,

"Learned counsel for the intervenient petitioners submitted that although the rules do not provide for the intervention of any party in a pending writ application, yet as the supervisory writ jurisdiction of this court is for the public good any interested party with a legitimate interest should be permitted the opportunity of participating in the proceedings and being heard. He referred to the following observations of Wanasundera J., in Jayanetti vs. Land Reform Commission, 1984 (2) SLR 172,179, when dealing with a question of addition of parties in a fundamental rights application:

"As far as the rules go, it would appear that they deal with the bare skeleton of procedure relating to a proceeding under Article 126. Part VI of the rules which deals with these procedural matters

consist of only four rules, i.e., rules 63-66. It is inconceivable that these four rules are comprehensive and all embracing and can provide for every situation that could arise in the exercise of our jurisdiction under Article 126. Incidentally even the Civil Procedure Code with more than 800 sections is said not to be exhaustive".

Justice Ameer Ismail also said,

"In this connection the following observations of Wanasundera J., in Ramasamy vs. Ceylon State Mortgage Bank (1976) 78 NLR 510 at 517 were also referred to:

"Finally it is my view that when we are dealing with a matter concerning the extent of the powers and jurisdiction, which is reposed in us, to be exercised for the public good, we should hesitate to fetter ourselves with arbitrary rules, unless such a course of action is absolutely necessary".

(7) <u>The matter with regard to floodgates:</u>

His Lordship also said,

"Tambiah J., observed in Chandrasena's case at page 144, that his reluctance to allow the application for intervention was also for the reason "that the recognition of such a principle would open the floodgates, as it were, to a torrent of similar applications and thus impede the functioning of the Courts".

Wade in Administrative Law, 06th Edition, page 689 has aptly stated,

"Judges have in the past had instinctive reluctance to relax the rules about standing. They fear that they may "open the floodgates" so that courts will be swamped with litigation....***But recently these instincts***

have been giving way before the feeling that the law must somehow find a place for the disinterested, or less directly interested citizen in order to prevent illegalities in government which otherwise no one would be competent to challenge".

(8) <u>Conclusion:</u>

In the circumstances, this court allows the intervention.

Judge of the Court of Appeal

Hon. Sasi Mahendran

I agree

Judge of the Court of Appeal.