

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

In the matter of an Application for mandate in the nature of Writ of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Writ Application No:

382/2020

Galagedarage Dayananda
alias Dayananda Galagedara
No. 75/70, Sadun Uyana,
Mabulgoda,
Pannipitiya

Petitioner

Vs.

1. Malani Abeywardena Ranathunga
Chairman
Debt Conciliation Board,
No.35 A, Dr. N.M. Perera Mawatha,
Colombo 08
2. T.D.K. Pujitha Thilakawardena
Member
Debt Conciliation Board,
No.35 A, Dr. N.M. Perera Mawatha,
Colombo 08
3. K.M. Karunarathna
Member
Debt Conciliation Board,
No.35 A, Dr. N.M. Perera Mawatha,
Colombo 08

4. K.P. Bandula
Member
Debt Conciliation Board,
No.35 A, Dr. N.M. Perera Mawatha,
Colombo 08
5. K.A.P. Rajakaruna
Member
Debt Conciliation Board,
No.35 A, Dr. N.M. Perera Mawatha,
Colombo 08
6. Haththimuni Sarath Maithripala De
Silva
No. 2/10, 1st Lane,
Mahamegawaththa,
Maharagama
7. Dadigamuwage Mallika Rathnaseeli
No. 218, Hiripitiya,
Pannipitiya

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Dr. Wijayadasa Rajapakashe PC with Dasun Nagashena and Harsha
Liynaguruge, instructed by Jayamuditha Jayasooriya for the Petitioner
Shayamal A. Collure with Prabhath S. Amarasinghe, instructed by A.P.
Jayaweera for the 6th Respondent
Mahinda Nanayakkara, instructed by Lakshman Premasiri for the 7th
Respondent

Argued on: 09.02.2022

Written submissions tendered on:

24.02.2022 by the 7th Respondent

23.02.2022 by the Petitioner

Order delivered on: 25.05.2022

S.U.B. Karalliyadde, J.

The Petitioner in this writ application seeks a writ of Certiorari to quash the decision of the Debt Conciliation Board (hereinafter referred to as the ‘Board’) dated 07.08.2019 on the basis of that the 1st - 5th Respondents, the Chairman and Members of the ‘Board’ have acted without jurisdiction and *ultra vires*.

On the 09th Feb. 2022, when the matter was taken up for argument, the learned Counsel appearing for the 7th Respondent raised a preliminary legal objection regarding the maintainability of this writ application. That objection was reordered by the Court in the following manner;

“The learned Counsel for the Respondents (the 7th Respondent) argued that the Petitioner has failed to name the ‘Board’ as a Respondent. His contention is that without making the ‘Board’ a party to the instant application, the Petitioner cannot invoke the jurisdiction of the Court and maintain this application. The learned Counsel for the (7th) Respondent further submitted that the ‘Board’ is a separate statutory body established by the Ordinance and hence, the members of the ‘Board’ are liable for the decisions made by them in their official capacity, not in their personal capacity. The members are acting on behalf of the ‘Board’ and they cannot sue and be sued in respect of any decision of the ‘Board’ as the notion of perpetual succession lies with the ‘Board’ itself and not with the members who are appointed by the Minister.”

The argument of the learned Counsel for the 7th Respondent is that the Petitioner has made a fatal error in making this application and therefore, the application should be dismissed *in limine*.

Responding to that argument, the learned President's Counsel appearing for the Petitioner submitted to Court that even though, the function of the 'Board' is quasi-judicial, it has no legal personality and cannot be considered as a juristic or an incorporated body under the Debt Conciliation Board Ordinance, No. 39 of 1941 (hereinafter referred as the Ordinance). Hence, he argued that a necessity does not arise for the Petitioner to make the 'Board' as a party to this application.

There are many authorities which deal with naming necessary parties to the writ applications. In the case of *Rawaya Publishers and Other vs. Wijedasa Rajapaksha, Chairman Sri Lanka Press Council & Others*¹, Justice J. A. N. De Silva has held that; *"In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made, but whose presence is necessary to a complete and final decision on the question involved in the proceedings."*

In *James Perera vs. Godwin Perera*², the petitioner applied for a writ of Mandamus on the Chairman of a Village Committee for the issue of a bakery licence in his favour. The petitioner stated in his petition that the Chairman issued the licence to one Jayasinghe and has failed to issue it to him. Said Jayasinghe was not a party to the writ application. The respondent's Counsel submitted that the issue of the Writ would affect prejudicially the rights of Jayasinghe who is not before the Court. Nagalingam, A.J., held that in an application for a writ of mandamus to compel a local authority to issue

¹ C.A. 1166/99

² 48 NLR 110.

a bakery licence in favour of the petitioner in circumstances, prejudicial to the rights of the person who was already holding the licence and, the failure to make the holder of the licence as a party respondent is a fatal irregularity.

In the case of *Udit Narayan Singh vs. Board of Revenue*³ it was held that where a writ application is filed in respect of an order of the Board of Revenue, not only the Board itself is a necessary party, but also the parties in whose favour the Board has pronounced the impugned decision because, without them no effective decision can be made. If they are not made parties, then the petition can be dismissed *in limine*. It has also been held that persons vitally affected by the writ petition are all necessary parties.

In the case of *Farook v. Siriwardena Election Officer & Others*⁴ His Lordship Justice Kulatunga remarked that the failure to name the person who was nominated by the party as a member of the Municipal Council and whose rights are affected in the writ application proceedings, is fatal to the validity of the writ application.

In *Carron vs. The Government Agent, Western Province*⁵ the unsuccessful candidate, Mr. Carron applied for a Writ of Mandamus to set aside the election of the successful candidate alleging irregularities committed by the Returning Officer with regard to the nomination of candidates and to the permission granted to one candidate to withdraw from the election. It was admitted that one Jayasinghe had accepted and acted in the office of a member of the Urban Council. But he was not made a party to the proceedings. Wijeyewardene, J. held that;

“Even if a Writ of Mandamus could issue in the present case, there is a serious objection to the present application. The petitioner wants to have the election declared

³ AIR 1963 SC 768.

⁴ (1997) 1 SLR 145 at page 148.

⁵ 46 NLR 237.

void, but has failed to make Mr. Jayasinghe a party respondent. The petitioner's Counsel did not at any stage move to have him added as a party. The application must fail on that ground also” (at page 239).

*In Abeydeera and 162 others v. Stanley Wijesundera. Vice Chancellor, University of Colombo & Others*⁶ it was held that 115 students of the North Colombo Medical College are necessary parties and the failure to make them respondents is fatal to the petitioner's application.

Section 2 (1) of the Ordinance provides thus;

“For the purposes of this Ordinance there shall be established a board to be called the Debt Conciliation Board of Sri Lanka which shall consist of five members appointed by the Minister, one of whom shall be nominated by the Minister to be Chairman of the Board.”

In the instant application, the 1st to 5th Respondents have arrived at the impugned decision being the Members of the ‘Board’. Therefore, the Court cannot effectively make an order, if the ‘Board’ is not made a party and the Court is of the view that the ‘Board’ should be a necessary party to this application. It is relevant to consider as to whether the Court can allow to name the ‘Board’ as a party to this application at this stage.

Justice Sri Skandarajah, in the case of *Dominic vs. Minister of Lands and Others*⁷ observed that;

“S. F. A. Coorey; ‘Principles of Administrative Law in Sri Lanka’ 2nd Edition at page 537 under the subheading: Subsequent addition of a Respondent observed:

⁶ (1983) 2 SLR 267.

⁷ CA 918/2005.

The failure to make a necessary party a respondent is fatal. If the omission is discovered during the pendency of the application for the writ the Petitioner is well advised to apply to court to add such party as a respondent. Such an application for addition will be allowed only if the application is not yet ready for final disposal by court;

In *Vinnasithamby vs. Josephm*⁸ it was held that once the final hearing of the application by court commences, such an application made thereafter will be refused.

In *Ramasamy vs. Ceylon State Mortgage Bank and others*⁹ where the Minister who made the vesting order under the relevant Act in respect of the redemption of land was not made a party to the application of writ of certiorari, but was allowed to be added as a party respondent on an application made 4 years after the case was originally filed. Considering the power of court to deal with the question of laches, Justice Wanasundara observed that "*principle of laches must be applied carefully and discriminate and not automatically and as a mere mechanical device.*" In that case the Minister who was in charge of the subject was made a party and when the objection was taken that he was not the person who made the order, the court considered the circumstances of the case and permitted the addition, because otherwise grave prejudice would have been caused to the petitioner.

In his statement of objections dated 09.08.2021, the 7th Respondent has raised the preliminary legal objection regarding non-joinder of the 'Board' as a party to this application. Even though, the Petitioner has not made an application to Court to name the 'Board' as a Respondent until it came up for argument on 09.02.2022, in the written submissions filed by the Petitioner dated 23.02.2022 regarding the preliminary legal objection of the 7th Respondent, an application has been made to name the 'Board' as a

⁸ 65 NLR 359.

⁹ 78 NLR 510.

respondent. Considering all the above stated facts and circumstances, I hold that the 'Board' is a necessary party to this application without whom no order can be effectively made and the application of the Petitioner should be allowed subject to cost of Rs. 15 000/- payable to the 7th Respondent. The Petitioner is permitted to amend the Petition dated 05.10.2020 to name the 'Board' as a Respondent to this application.

JUDGE OF THE COURT OF APPEAL

M. T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL