

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

In the matter of an application for orders
in the nature of Writs of Certiorari
Mandamus and Prohibition under Article
140 of the Constitution of Democratic
Socialist Republic of Sri Lanka.

C.A./Writ Application

No. 399/2020

Rev. Uturawala Dhammaratana Thero
No.738/1 Chiththabyasa Institute
Sudarshana Mawatha Kelaniya.

vs.

1. Hon. G.L.Peris M.P. Minister of
Education Education Ministry
Isurupaya Battaramulla.
2. Professor Kapila C.K. Perera
Secretary to the Ministry of
Education Education Ministry
Isurupaya Battaramulla.
3. Buddhist and Pali University of Sri
Lanka No.37 Moragahahena Road
Pitipana Homagama
4. Senior Professor Rev. Gallalle
Sumanasiri vice chancellor Buddhist

and Pali University of Sri Lanka No.
37 Moragahahena Road Pitipana
Homagama.

5. Piyaratna Ranasinghe Arachchi
Registrar and Administrative
Secretary Buddhist and Pali
University of Sri Lanka No. 37
Moragahahena Road Pitipana
Homagama.

Before: Hon. D.N. Samarakoon

Hon. Sasi Mahendran

Appearance: Varuna Nanayakkara for Petitioner

S. Dharmawardhana PC ASG with R. Gooneratne SC for

Respondents

Supported on: 23.03.2022

Written Submissions: On 25.05.2022 by Petitioner

On 06.06.2022 by Respondents

Date: 29.07.2022

ORDER

Justice D.N. Samarakoon

The prayer of the petition of the petitioner dated 13.10.2020 is as reproduced below.

a) Issue notice on 1st, 2nd, 3rd, 4th and 5th Respondents;

- b) Issue an **interim order** staying the decision made by the 1st and 2nd Respondents by halting the procedure and/or process of selecting the post of Vice Chancellor until the final hearing and determination of this application;
- c) Issue an interim order preventing the 3rd , 4th and 5th Respondents, their servants or agents from taking any steps in respect of the appointment of the post of Vice Chancellor in contravention of the Buddhist and Pali Act marked '**X1**' to the Petition until the final hearing and determination of this application;
- d) Issue a Mandate in the nature of Writ of Prohibition preventing the 1st, 2nd, 3rd, 4th and 5th Respondents appointing the vacancy of post of Vice Chancellor in violation of the rules and laws the contravention of the Act marked '**X1**');
- e) Issue a Mandate in the nature of Writ of Certiorari to quash the decision taken by 1st, 2nd,3rd,4th and 5th Respondents to fill the vacancy of the post Vice Chancellor by following the rules set out in the Commission Circular No. 02/2020 by the University Grants Commission ;
- f) Issue a Mandate in the nature of Writ of Certiorari quashing the Post of Vice Chancellor if the position has been filled by 1st,2nd,3rd,4th and 5th Respondents acting in any manner which is prejudicial to the council rules and regulations laid out by the said Act marked '**X1**');
- g) Issue a Mandate in the nature of **Writ of Mandamus** compelling the 1st, 2nd, 3rd , 4th and 5th Respondents to fill the vacancy of post of Vice Chancellor which is due on 30.10.2020 in accordance with rules set out in section 10 of the Buddhist and Pali Act marked 'X1';
- h) An order for costs;

- i) And such other and further relief that Your Lordships' Court may seem meet.

(a) Alleged suppression of material facts by the petitioner

The first preliminary objection of the respondents is “suppression of material facts by the petitioner”.

The respondents in putting forward the said preliminary objection has reproduced the gist of paragraph (e) in the prayer of the petition which is,

“Issue a Mandate in the nature of Writ of Certiorari to quash the decision taken by [1st, 2nd, 3rd, 4th and 5th Respondents] to fill the vacancy of the post Vice Chancellor by following the rules set out in the Commission Circular No. 02/2020 by the University Grants Commission ;...”

The portion within square brackets is not written in the reproduction of the respondents of the aforesaid paragraph in their written submissions dated 06.06.2022.

The respondents state in their said written submissions, (at unnumbered page 02)

“As per the above stated relief it is respectfully noted that the petitioner has suppressed to this court the decision the petitioner sought to quash.....In the absence of a decision duly pleaded and prayed amounts to serious suppression by the petitioner which makes this application frivolous and erroneous that is liable to be dismissed in limine”.

But, paragraph 16 of the petition says,

“The petitioner states at the 412th Council meeting held on 25.08.2020 a decision was taken to appoint the vice chancellor in accordance with the commission circular No. 02/2020 of the University Grants Commission”.

Hence there is no suppression as suggested by the respondents. Thus there does not arise any question of misdirection, misinterpretation or misrepresentation by the petitioner.

Hence authorities cited by respondents in regard to alleged “suppression” have no application.

The respondents also state in their said written submissions (at unnumbered page 04)

“Considering the above stated judgments, it is pertinent to state that the petitioner has failed to submit full fair and truth disclosure of the material fact which the petitioner intends to challenge which is also the purpose of inviting this court to exercise the discretionary remedy of writ jurisdiction”.

The context of the said objection touches facts averred by the petitioner.

In **JATHIKA SEVAKA SANGAMAYA v SRI LANKA PORTS AUTHORITY AND ANOTHER (2003) 2003 03 SLR 146** it was held by the Court of Appeal,

“The purpose of raising preliminary objections is not to shut out or stifle legitimate adjudication. Preliminary objections are particularly unhelpful and are without basis in the context where facts and/or law is in dispute. It is also important to distinguish a preliminary objection from an objection on any point of law, which can be raised at any part of the trial unlike the preliminary objections, which by its nature is expected to be raised at the beginning of the proceedings prior to the beginning of the arguments in the case”.
(at page 149)

(b) Alleged failure to name necessary parties

The next preliminary objection of the respondents is “Failure to name necessary parties”.

In this regard the respondents state in their said written submissions (at unnumbered page 05)

“The respondents respectfully state that the above provisions of the Buddhist and Pali University Act and the University Grants Commission circular postulates the pivotal role played by the council of the 03rd respondent university in the decision making process in appointing the vice chancellor of the said respondent. This is further evident with decisions of the council taken pertaining to the appointment of vice chancellor annexed as R.5 R.6 and R.7 filed by the respondents by way of a motion dated 23.06.2021 to Your Lordships’ court. Therefore members of the council of the 03rd respondent university are necessary parties for proper adjudication of this application in which petitioner has failed to do”.

In this respect respondents have cited the case **Gregory Fernando and others vs. Stanley Perera Acting Principal Christ the King National School and others [(2003) 2004 01 SLR 346]** in which the Court of Appeal dismissed at the commencement an application for a writ of certiorari to quash a temporary list containing the names of the successful children without making the successful children or their parents parties to the application.

Sripavan J. (as he was then) held “It is vital that fairness demands that a person whose rights would be adversely affected must be given an opportunity for a fair hearing. One would not go to the merits of a case without hearing necessary parties”.

But Sripavan J. himself said in that case “Accordingly it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done. **The law is concerned with public confidence in the administration of justice; hence it is of paramount**

importance to ensure that individuals feel that they have been given a fair hearing before a decision is taken". (at page 349) (emphasis added in this order)

It is respectfully submitted that the statement of Sripavan J. that "*One would not go to the merits of a case without hearing necessary parties*" cannot co exist with His Lordship's statement "The law is concerned with public confidence in the administration of justice; *hence it is of paramount importance to ensure that individuals feel that they have been given a fair hearing **before a decision is taken***" unless the party which has not been added is added and court grants to parties a full hearing because the words "*hence it is of paramount importance to ensure that individuals feel that they have been given a fair hearing **before a decision is taken***" is applicable not only to the party who has not been added but to the party who comes to court as petitioner claiming an entitlement. A dismissal at the commencement is a "decision".

This is established without any doubt by His Lordship's own statement in that case which said "***A court exercising judicial review has a duty to ensure that basic principles of natural justice are followed and cannot negate or breach it to the detriment of any party***". (at page 347)

Hence the remedy for any alleged failure to add a party is to allow the addition of that party and to have a full hearing but not to dismiss the case at the very commencement.

(c) Defective prayer

The next preliminary objection of the respondents is "defective prayer". Respondents have in their written submissions reproduced paragraph (f) of the prayer of the petition which says (at unnumbered page 06)

*“Issue a Mandate in the nature of Writ of Certiorari quashing the Post of Vice Chancellor if the position has been filled by 1st, 2nd, 3rd, 4th and 5th Respondents acting in any manner which is prejudicial to the council rules and regulations laid out by the said Act marked ‘**X1**’;...”*

The respondents state in the said written submissions (at unnumbered page 06)

“...In such instances Your Lordships in terms of Article 140 of the constitution of the Republic of Sri Lanka is empowered to exercise writ jurisdiction in the form of issuing a writ of certiorari to quash an ultra vires order. The above stated prayer does not include an order or decision made by an officer or authority but the petitioner seeks to quash a position that is the post of vice chancellor which is erroneous in law”.

It may be noted that whereas there is an obvious defect in said paragraph (f) a decision to be quashed is referred to in paragraph (e) of the prayer read with paragraph 16 of the petition. The said paragraph (e) reads,

*“Issue a Mandate in the nature of Writ of Certiorari to quash the **decision** taken by 1st, 2nd, 3rd, 4th and 5th Respondents to fill the vacancy of the post Vice Chancellor by following the rules set out in the Commission Circular No. 02/2020 by the University Grants Commission ;...”*

But even otherwise a “defective prayer” will not ensue the automatic dismissal of the petition on that reason.

In **Simi.A.C. vs The Secretary**¹ decided **IN THE HIGH COURT OF KERALA AT ERNAKULAM JUSTICE DAMA SESHADRI NAIDU** said “Ramachandran's two-volume treatise Law of Writs, (EBC, 6th Edn.), after examining the case law holding the field on this issue opine thus (pp.1576-1581):

¹ <https://www.casemine.com/judgement/in/5ac5e3d54a93261a672bff8a>

"The approach of the court in granting relief must be liberal and no hyper technical view should be taken. The court has a very wide discretion in granting relief and as held by the Supreme Court in Charanjit Lal v. Union of India. A petition under Article 226 should not be thrown away merely on the ground that the proper relief is not prayed for by petitioner. Even if the petitioner has asked for wider relief which cannot be granted by the court, it can grant such relief to which the petitioner is entitled.

*** However, looking to the decisions of the Supreme Court starting from Charanjit Lal, it clearly appears that the Supreme Court has taken a liberal view by holding that a petition under Article 32 or under Article 226 of the Constitution should not be rejected merely on the ground of formal defects in praying for proper reliefs.

***** It is, however, well settled that no petition will be dismissed by the court only on the ground that the prayer clause is defective. If the court is satisfied that the petitioner is entitled to a particular relief, it may grant such relief irrespective of defective prayer clause before dismissing the petition on the ground that no proper relief was sought by him.**" (paragraph 36 of the judgment) (emphasis added in this order)

Hence preliminary objections are overruled. On the basis of the contents of the petition and oral submissions made by the learned counsel for the petitioner at the hearing satisfying that the petitioner has shown a prima facie case this court issues the reliefs in paragraphs (a) (b) and (c) of prayer to the petition. The interim orders will operate until the next date of the case. There is no order on costs.

Judge of the Court of Appeal.

Hon. Sasi Mahendran

I agree.

Judge of the Court of Appeal.