

**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 Mandamus under and in
terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

CA/WRIT/21/2022

1. Annalingam Annarasa
Vice President,
Island North Kayts Division
Fisherman's Cooperative Societies
Union,
Main Street, Kayts, Jaffna District.
2. Pathimarasa Leeliyankurus,
President,
Delft Island Fisherman's Cooperative
Societies Union,
Ward No. 1, Main Road, Delf, Jaffna
District.
3. Kanthasamy Rajachandran,
President,
Karainagar Ambal Division
Fisherman's Cooperative Societies
Union,
Vedeyarasan Veethi, Karainagar,
Jaffna District.
4. Antanys Edward Kaitrags,
Secretary,
Munai Fisherman's Cooperative
Societies Union,
Point Pedro, Jaffna District.
5. Nagarasam Varnakulasingham,
President,
Vadamarachchi Norh Fisherman's
Cooperative Societies Union,
Arasad Thondamaru, Jaffna District.

6. Centre for Environmental Justice
(Guarantee) Limited,
No. 20/A, Kuruppu Road,
Colombo 08.
7. Withanage Don Hemanha Ranjith
Sisira Kumara,
Director and Senior Advisor,
Centre for Environmental Justice,
No. 20A, Kuruppu Road,
Colombo 08.
8. Pathragoda Kankanamge Dilena,
Executive Director,
Centre for Environmental Justice,
No. 20A, Kuruppu Road,
Colombo 08.

Petitioners

Vs.

1. S. J. Kahawatta
Director General,
Department of Fisheries and Aquatic
Resources,
3rd Floor,
New Secretariat,
Maligawatta,
Colombo 10.
- 1A. Director General
Department of Fisheries and Aquatic
Resources,
3rd Floor,
New Secretariat,
Maligawatta,
Colombo 10.
2. Hon. Douglas Devananda,
Minister of Fisheries,
New Secretariat, Maligawatta,
Colombo 10.

- 2A. Minister of Fisheries
New Secretariat, Maligawatta,
Colombo 10.
3. Rear Admiral,
Anura Ekanayake,
Director General, Sri Lanka Coast
Guard,
Udupila, Mirissa, Matara.
- 3A. Director General
Sri Lanka Coast Guard,
Udupila, Mirissa, Matara.
4. Vice Admiral.
Nishantha Ulegetenne,
The Commander of the Sri Lankan
Navy,
Naval Headquarters,
Colombo.
- 4A. The Commander of Sri Lanka Navy
Naval Headquarters,
Colombo.
5. General G. D. H. Kamal Gunarathna
(Retd),
Secretary, Ministry of Defence,
Defence Headquarters Complex,
Sri Jayawardanapura Kotte.
6. Chandana Sooriyabandara,
Director General of Wildlife
Conservation,
Department of Wildlife Conservation,
No. 811A, Jayanthipura, Battaramulla.
- 6A. Director General of Wildlife
Conservation
Department of Wildlife Conservation,
No. 811A, Jayanthipura, Battaramulla.

7. C. D. Wickramaratne,
Inspector General of Police,
Police Headquarters,
Colombo 01.
8. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Ravindranath Dabare with Savanthi Ponnampereuma, Nimal
Wickamasinghe and Thusini Jayasekara for the Petitioners.

Vickum de Abrew PC, ASG with Amasara Gajadeera SC and M.
Fernando SC for the Respondents.

Supported on : 13.12.2022

Written Submissions: Petitioners -10.01.2023
Respondents- 03.02.2023

Decided on : 13.02.2023

Sobhitha Rajakaruna J.

The Petitioners plead in the instant Application that the Indian trawlers entering Sri Lankan waters and operating illegally a.) without a licence b.) using illegal fishing methods deprives the a.) the livelihoods of Sri Lankan fisherman

b.) national fish production

c.) export income of fishing

d.) and rich eco system of the Sri Lankan waters.

(vide-paragraph 94 of the Petition of the Petitioners)

The Petitioners claim that it is the responsibility of the Respondents to ensure the safety of Sri Lankan fisherman, their right to livelihood, the sovereign of the Sri Lankan and the sustainability of the fishery resources in Sri Lankan waters and to protect and preserve the natural resources for the present & future generations. The Petitioners further plead that in order to deter illegal, unreported and unregulated fishing ('IUU'), the Respondents must augment with regular patrols and arrests for which maritime domain advertence and veracious real-time reporting is fundamental, essential and mandatory under the law (vide- paragraph 95 & 96 of the Petition of the Petitioners).

I can identify the above averments of the Petition of the Petitioners as the crux of their reason to file the instant Review Application before this Review Court. The reliefs sought by the Petitioners are for orders in the nature of writs of Mandamus against the Respondents. The Respondents by way of the motion dated 01.12.2022 have tendered to Court the Indian Fishing boat arrest details from 2017 to 2022, marked 'X1' and the list of vessels auctioned after arresting the vessels, marked 'X2'. The learned Additional Solicitor General ('ASG') who appears for the Respondents stressed that the relevant authorities including several Respondents have been taking effective steps to arrest the problem on illegal fishing in territorial waters of Sri Lanka.

The learned ASG asserts that the Petitioners have filled this Application without taking into account the enormous measures taken by the respective Authorities and the Petitioners are not entitled to have and maintain the instant Application. Raising two preliminary objections on the maintainability of the instant Application, the learned ASG moves that this Application be dismissed in limine. He contends that the Petitioners have failed to establish their entitlement to seek writs of Mandamus and also that the reliefs sought by the Petitioners in the prayer of the Petition are vague.

Now, I need to examine the reliefs prayed for by the Petitioners in the prayer of the Petition in order to ascertain as to whether there is merit in the said preliminary objections and also whether the Petitioners have submitted a prima facie or an arguable case warranting this Court to issue formal notice of this Application on the Respondents, employing the basic principles governing judicial review.

The Prayer of the amended Petition dated 18.08.2022;

- a) Issue notice of this application on the Respondents in the first instance

- b) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 1st, 3rd and 4th Respondents to give full effect to the Fisheries (Regulation of Foreign Fishing) Act No. 15 of 1979 (Amendment) Act No. 1 of 2018;
- c) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 1st, 3rd, 4th Respondents to perform their duties in terms of Section 10, 13, 15, 16 and 17 to the Fisheries (Regulation of Foreign Fishing) Act No. 15 of 1979 (Amendment) Act No. 1 of 2018 in order to prevent illegal bottom trawling and to punish the offenders who have violated and/or is violating the law;
- d) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 1st, 3rd, 4th Respondents to arrest those who act in violation of the provisions of Fisheries (Regulation of Foreign Fishing) Act No. 15 of 1979 (Amendment) Act No. 1 of 2018 and to take legal actions against such violation as stipulated therein;
- e) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 6th and 7th Respondents to perform their duties to protect the fishes and amphibians protected under Section 31 and to prosecute the violators in terms of Section 31B of the Fauna and Flora Protection Ordinance No. 02 of 1937 as amended;
- f) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 3rd Respondent to perform his statutory duties under Section 4(a), 4(h) and 4(j), 5 and 8 of the Department of Coast Guard Act No. 41 of 2009;
- g) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 2nd Respondent to adhere to the principles of international convention which Sri Lanka has ratified and incorporate relevant provisions into the domestic laws, to prevent illegal bottom trawling and destruction of the marine ecology;
- h) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 2nd Respondent to make regulations to give effect to the provisions of Fisheries (Regulation of Foreign Fishing) Act No. 15 of 1979 (Amendment) Act No. 1 of 2018 and in terms of Section 26 of the Fisheries (Regulation of

Foreign Fishing) Act No. 15 of 1979 (Amendment) Act No. 1 of 2018 in performing his statutory duties;

- i) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 7th Respondent to take actions in terms of Fisheries (Regulation of Foreign Fishing) Act No. 15 of 1979 (Amendment) Act No. 1 of 2018, Flora Protection Ordinance No. 2 of 1937 as amended and the Police Ordinance.

The Petitioners' argument is that 'the prayer of the Petition only seeks **orders in the nature** of writs of Mandamus to create a positive duty against the inaction or failure of a public body **that ultimately resulted in an ultra vires action**; and to either validly exercise a power or to compel to perform relevant statutory duties vested upon a public body as distinguished from acts in the law with a view to preserve the rule of law'. Hence, what needs consideration of this Court is whether such orders in the nature of writs of Mandamus can be granted by twisting the elements required to issue a writ of Mandamus with particular assertions upon ultra vires and also based on the existing prayer of the Petition of the Petitioners.

The Review Courts have developed the scope of the jurisdiction to issue writs of Mandamus to a greater extent but subject to certain limitations. The Supreme Court in *Weligamawa Multi-Purpose Cooperative Society Ltd. vs. Chandrasa Daluwatta (1984) 1 Sri. L.R. 195* confirmed that a writ of mandamus may be issued to secure the performance of a public duty, in the performance of which the applicant has sufficient legal interest. The public duty sought to be enforced must be of public nature stemming from a statute, charter, the common law or custom and however, cannot be of a merely private character.

Although the learned Counsel for the Petitioners argues that the reliefs sought in the prayer are not directly for writs of Mandamus but for orders in the nature of writs of Mandamus, the Petitioners are still bound to satisfy the basic legal requirements of a writ of Mandamus. It seems that the Petitioner has misconceived the notion of orders in the nature of writs of Mandamus. It is important to note that Mandamus will not be available where there has been a valid exercise of power, merely because the Petitioner believes that the discretion has been exercised erroneously by the Respondents. Sansoni J. observed in *Samaraweera vs. Balasuriya 58 NLR 118 (at p.120)*;

“It is trite law that Mandamus is only available to compel the doing of a duty not done, and not on the ground that the duty had been done erroneously.”

On the other hand, the Respondents rely on several important judgements where the Court of Appeal was not inclined to issue formal notice at the threshold stage when the prayer of the Petition was too wide and vague. In ***H. K. D. Amarasinghe and others vs. Central Environmental Authority and others, CA/Writ/132/2018 decided on 03.06.2021***, His Lordship Justice Arjuna Obeyesekere J., P/CA (as His Lordship then was) considering the respondent’s submissions that the relief prayed for by the petitioners was too wide and too vague has dismissed the relevant application in limine. The Court held therein;

“A petitioner invoking the jurisdiction of this Court must seek relief that would address their grievance and must not refer to each and every section in an Act hoping and praying that his case would come under at least one of the said sections. In other words, the relief that is sought must be specific and should address the concerns of the petitioner. This would then enable the respondents to respond to the averments of fact and law raised by the petitioner. The fact that the relief is vague is an indication that the petitioner is unsure of the allegations that he/she is making against the respondents and makes the task of Court to mete out justice that much harder.”

In the case of ***Rev. Battaramulle Seelarathana vs. Ceylon Electricity Board, CA/Writ/213/2017 decided on 19.07.2017***, L. T. B. Dehideniya J. (P/CA) (as he then was) based on the manner in which the prayer of the petition has been formulated has observed that;

“...This is a vague application. The duty that he is directed to perform must be clearly indicated because the writ of mandamus is always followed with a threat of punishing the person for not obeying the Court order if he fails to perform the duty that he is directed to perform. Therefore the Court cannot direct a person to "perform its duties with regard to the Procurement Process" unless the duty is correctly specified.”

The Court of Appeal in the above case of ***Rev. Battaramulle Seelarathana*** has dismissed the respective application without issuing formal Notice on the Respondents. In ***Uttar***

Pradesh Urdu Development vs. State Election Commissioner 2006 (2) AWC 1302 18.01.2006, the Allahabad High Court held;

“The second prayer in the writ petition is vague. It vaguely seeks a Mandamus to the respondents to implement the U.P. Official Language Act and its notification in the Local Body elections. For this reason, we had required the petitioners to be more specific and to give a list of documents relating to the said elections which the petitioners wanted to be published in Urdu also. We have already referred above to such list and the reason why we are not inclined to issue a mandamus for their publication in Urdu.

The precedent laid down by L. T. B. Dehideniya J. (P/CA) (as he then was) in *Wanninayaka Mudiyansele Dhanapala vs. Mr. Nimal Kotawalagedara Commissioner of Buddhist Affairs, CA/Writ/243/2017 decided on 07.11.2017* is pertinent to the core issue in reference to the objections upon the vague prayer of the Petition of the Petitioners. In the said case, the Court of Appeal has considered the aftermath of granting reliefs in writ applications. This is a vital aspect to which serious attention should be drawn when granting reliefs as prayed for in the prayer since the courts should avoid adverse effects being caused to the Respondents or any other officials who are not a party to the respective application upon granting such reliefs. The Court held;

*“In all these prayers, the Petitioners move this Court to issue writs of mandamus in general against the 1st to 9th Respondents. Since there is a punishment for non compliance of the Court order, I am of the view that the Petitioners cannot maintain an application for a writ of mandamus in this nature. It has to be specific. Especially in the wide range of activities that are being complained of in this case, it is essential to explain each and every order directed to which Respondent and the statutory duty that has to be complied with. Otherwise the 1st to 9th Respondents will have to face a situation that they could be charged for Contempt of Court on unimaginable instances. In the case of *Samastha Lanka Nidahas Grama Niladhari Sangamaya v. Dissanayake and others 2011 (2) B.L.R. 467 Sathya Hettiga J cited with approval the decision in the case of P.S. Bus Company V. Secretary of Ceylon Transport Board 61 NLR 491 at 496 where it was held that "the Court held when considering granting a Writ the Court will consider the probable consequences of granting a prerogative writ".*” (Emphasis added)*

In *Dinesh Kumar vs. Moti Lal Nehru Medical College, Allahabad, AIR 1990 SC 2030 at 2052, 2032, 2033: (1990) 4 SCC 627*, the Supreme Court of India has highlighted the importance of complying with the court orders and has observed that default by anyone in any part of the country would be viewed very seriously and drastically dealt with. (Also see- '*Principles of Administrative Law*' by M. P. Jain & S. M. Jain (9th Edition) 2022, p.2725). In light of the above, the orders of Court should be clear & firm and cannot be based on vague facts and uncertain reliefs. The Court in the said case held;

“The directions of this Court are not intended to be brushed aside and overlooked or ignored. Meticulous compliance is the only way to respond to directions of this Court.”

The constant approach taken by this Court is that merely laying down a sequence of evidence in the body of the Petition would not be sufficient as the judgement of a case should finally focus on the prayer of the Petition of the Petitioners. The reasons set out by Court in support of a judgement in a case must be cogent and succinct. The reasons to employ a certain law under which the Court exercises its powers should be reflected in the impugned proceedings. Of course, it is no doubt when the Review Court exercises its discretionary jurisdiction, it can alter the reliefs sought in the prayer to a certain extent on exceptional circumstances in order to uphold the Rule of Law. But, judgements or orders of Court cannot be issued on imaginations of the judge which will not be satisfactory. A vague and a wide or uncertain prayer would pave way for Court to conjecture as to what the Petitioner exactly expects.

On a careful perusal of the prayer of the instant Application, it implies that the intention of the Petitioners is to get orders issued through Court in the nature of a writ of Mandamus directing the relevant Respondents to perform their duties in terms of hand-picked Sections of certain Statutes passed by the Parliament. If by any chance the Court decides to grant reliefs as prayed for in the prayer, eventually, a wide back door will be opened for the Petitioners or any interested party to file contempt charges against these Respondents. The manner in which the prayer of the Petition is formulated would create a harmful right to instigate contempt charges on an alleged inaction or omission upon a matter which the Respondents were not made aware of during the process of exercising powers under the Sections of those Statutes. For an example, if the Court decides to grant the reliefs contained in paragraph '(d)' of the prayer, then at any moment after issuing such order, if anybody violates, without the knowledge of the Respondents the

provisions of the Fisheries Act in anywhere in the island, the Petitioners will be able to instigate at the outset contempt proceedings against any one or more Respondents.

That is all the more why the governmental administrative process or any other process leading to litigation has prescribed initial steps to be followed. Allowing the reliefs as prayed for by the Petitioners would circumvent such preliminary steps resulting unusual contempt proceedings being instituted straight away against the Respondents based only upon such order/judgement. Similarly, the prayer of the Petition lacks the basic requirements as pointed out by me earlier.

Anyhow, taking judicial notice of a large-scale abuse of public power and granting prerogative remedies is always available to this Court even in the presence of an ill-fated prayer of the Petition. As the learned ASG has pointed out the document annexed as 'X1' to the aforesaid motion contains details of the arrests carried out by the Sri Lankan authorities from 2019-2022 to curb IUU fishing. The said 'X1' demonstrates;

“-Ninety-Four (94) vessels suspected of having engaged in IUU fishing have been arrested and detained by the authorities from 2019-2022;
-Over 550 fishermen on board these vessels have been arrested by the authorities from 2019-2022.”

Similarly, the document annexed as 'X2' to the said motion contains details of arrested/detained vessels which have been auctioned pursuant to court processes. As per the learned ASG, the statistics provide by 'X2' is significant, since it indicates the following;

“-the 'Arrested date' information indicates that vessels suspected of having engaged in IUU fishing have been consistently arrested and detained by the authorities from the year 2015-2020;
-out of the vessels which have been arrested/detained during this time period, 150 of those vessels have already been auctioned, forfeited or destroyed by the authorities pursuant to the initiation of proceedings before the relevant Magistrate's Court.”

Under general circumstances, this Court cannot intervene all the time in the governing process of the Government to direct what appropriate administrative measures should be taken. I have observed previously in a different case that the Court cannot be the judge of giving directions to a Government, intervening to the role of ruling the country. (See- *Nagananda Kodithuwakku vs. Dinesh Gunawardena Minister of Education, CA/WRIT/45/2022 decided on 03.02.2022*). In a similar vein, the practice of having a government by judges rather than a government by the people cannot be acceptable.¹ The circumstances of this case do not provide this Court to go to an extent of interfering with the governance of the government in reference to several averments of the Petition of the Petitioners.

Thus, I take the view that this is a fit and proper case to accept the plea of the Respondents based on the vague long-winded prayer of the Petitioner. The litigants will have to endure hardships due to bad drafting of pleadings and the inability to express cogently and succinctly what is exactly needed by a Petitioner. The pleadings and the prayer in the instant Application will not facilitate this Court to protect and preserve the environment and interests of the citizens of this country as pleaded by the Petitioners. Further, this Court is unable to arrive at any conclusion as requested by the learned Counsel for the Petitioners based on overall submissions made by the learned ASG in open Court. Once the learned ASG submits by looking at the prayer that the relevant officials are bound to follow the provisions of the Statutes mentioned in the prayer, what more could this Court extract from the averments of the Petition to issue orders as prayed for in the prayer?

The following passage in '*Administrative Law*' by *H. W. R. Wade and C. F. Forsyth (11th Edition) Oxford (at p. 575)* is, in my view, very much relevant to the issues in respect of an ill-fated prayer of a review application;

“Cases of this kind, in which contract, office and regulations are mixed in uncertain quantities, show well the snares that entrapped litigants² before the case of a health service doctor, discussed below, heralded a change³. Again and again claimants failed, not because their cases were

¹ See-Lord Hoffman in “The COMBAR Lecture 2001: Separation of Powers¹” referred to by Jeffrey Jowell in “Judicial deference: servility, civility or institutional capacity (P.L. 2003, Win, 592-601)

² See (1991) 107 LQR 298, 1994 PL 69 (S. Freedman and G. Morris)

³ The Roy case (*the reference is not given in the relevant footnote in the book*)

bad, but because they could not tell which procedure to follow. Again and again public authorities pleaded, often with ill-deserved success, that the wrong avenue was chosen”.

(Emphasis added)

Similarly, I am attracted by the following passage as well, where it is laid down under the sub topic of ‘**Relief refused in discretion**’ in the above ‘*Administrative Law*’ by H. W. R. Wade and C. F. Forsyth (p. 426);

“Closely akin to the subject of the foregoing paragraphs and overlapping it in some cases, is the question of the court’s discretion. The remedies most used in natural justice cases -the quashing order, the prohibiting order, the mandatory order, the injunction and the declaration-are discretionary, so that the court has power to withhold them if it thinks fit; and from time to time the court will do so for some special reason, even though there has been a clear violation of natural justice⁴”

In the circumstances, I refuse the application for issuance of notice upholding the objections raised by the Respondents. Further, I am not satisfied that there is an arguable ground for judicial review which has a realistic prospect of success. I am influenced by “*The Administrative Court Judicial Review Guide 2021*”⁵ of England and Wales, where guidelines are laid down in order to refuse permission at the threshold stage of a judicial review application.

Application is dismissed.

Judge of the Court of Appeal

Dharmika Ganepola J.

I agree.

Judge of the Court of Appeal

⁴ For a general statement see *Hoffmann-La Roche vs. Secretary of State for Trade and Industry* (1975) AC 295 at 320 (Lord Denning MR).

⁵ Sixth edition of the *Judicial Review Guide*- July 2021 which applies to cases heard in the Administrative Court wherever it is sitting and in the Administrative Court Offices (“ACOs”) across England and Wales.