

**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 Writ of
Mandamus and Writ of prohibition
under and in terms of Article 140 of
the Constitution.*

C.A./WRT- 0334/19

1. P.V. Vineetha Kumari,
B 96, Sama Mawatha,
Maligawila.
2. D.M. Nishantha Ranaweera,
43, Yudaganawa Janapadaya,
Buttala.
3. K.A. Wijesekara,
141, Near Water Refinery,
Samagipura,
Ampara.
4. K.M. Kapila Keerthisinghe
Bandara,
40 A, Kamhala Place,
Hingurana.
5. M.V. Dayarathna,
A100, Berannawa.

PETITIONERS

Vs.

1. Secretary,
Ministry of Education,
Isurupaya,
Sri Jayawardenapura,
Kotte, Battaramulla.

2. Director of Education (Irregular
and Special Education),
Isurupaya,
Sri Jayawardenapura,
Kotte, Battaramulla.

3. Zonal Director of Education -
Monaragala,
Zonal Education Office,
Monaragala.

4. Chief Secretary,
Uva Provincial Council,
Badulla.

5. Provincial Director of
Education,
Department of Education of
the Uva Province,
Badulla

6. Secretary,
Ministry of the Social Services
of the Uva Province
Badulla

7. Director,
Department of Social
Services of the Uva Province,
R.H. Gunawardena Mawatha,
Badulla.
8. Piyarathne Wickramage,
8A. K.M. Thilakarathne,
Manager,
9. Rasika Lakshitha Palliyaguru,
9A. C.T.P. Wijerathne,
Chairman,
10. Ajith Priyankara,
Secretary,
11. Dissanayake Mudiyanseelage
Jayarathna,
11A. W.A. Lionel Wanasinghe,
Treasurer,
12. D. M. Jayarathna Bandara,
12A. Ananda Wijewardena,
Accounts Overseer,
13. Kalahei lokuge Ramani,
13A. Piyarathne Wickramage,
Assistant Secretary,

14. Rathnayake Mudiyansele,
Senevirathne,
14A. Bhanuka Sachintha
Jayasinghe,
Committee Member,
15. Kamal Ranjith Lokuliyana,
15A. A. I. Manjula Kumara.
Committee Member,
16. Munasinghage Hemawansa.
Committee Member,
17. Welathanthrige Persy Nimal.
Botheju,
17A. R. M. K. Kumara.
Committee Member,
18. Dissanayake Mudiyansele.
Gotabhaya Sarath,
Committee Member,
- 8th to 18th Respondents, all of,
Special Education
Development Service Society,
Wellassa Subhagya Special School
Kumbukkana, Monaragala
19. Hon Attorney General of Sri Lanka,
Attorney General Department
Colombo 12.

RESPONDENTS

BEFORE : M. SAMPATH K. B. WIJERATNE, J
WICKUM A. KALUARACHCHI, J

COUNSEL : Aruna De Silva for the 8A, 9A, 10th, 11A, 12A,
13A, 14A, 15A, 16th, 17A and 18th Respondents.
A. Gajadeera, SC for the 1st-7th and 19th
Respondents.

ARGUED ON : 16.03.2023

DECIDED ON : 16.05.2023

WICKUM A. KALUARACHCHI, J.

The petitioners filed this application seeking a writ of mandamus directing the 1st Respondent, Secretary of the Ministry of Education to take over the management of the Wellassa Subhagya Special School. The petitioners have also sought a writ of prohibition, restraining the 8th to 18th Respondents from continuing as office bearers or members of the Special Education Development Society of the Wellassa Subhagya Special School. In addition, petitioners have sought a writ of mandamus directing the 1st, 4th, 6th, and 7th Respondents to initiate legal actions against the 8th to 18th respondents on the misconduct, mismanagement, fraud, and financial corruption based on the reports marked P-6 and P-8.

According to Section 62 of the Education Ordinance, an "Assisted School" is defined as a school to which aid is contributed from State funds.

The statements of objections were filed on behalf of the respondents and subsequently, counter objections were also filed. The parties have agreed to dispose the matter by way of written submissions without oral submissions. Accordingly, written

submissions were filed on behalf of petitioners, the 1st to 7th and 19th respondents, and the 8th to 18th respondents.

Background of the Case

The petitioners in this matter are the parents of five children who are students and residents of the Wellassa Subhagya Special School, an institution established to cater to the educational needs of children with vision, hearing, and mental impairments. Wellassa Subhagya Special School is an “assisted school” within the meaning of the Education Ordinance No. 31 of 1939. The school is governed by a society, namely the "Special Education Development Services Society," whose committee is comprised of the 8th to 18th respondents.

The petitioners’ position is that due to the alleged misconduct, mismanagement, and failure on the part of the management of the society to ensure the safety and welfare of the children, the lives of all students at the school have been put in danger. To substantiate their allegations of malpractices and financial mismanagement, reports P-6, P-7, and P-8 have been submitted with the petition. Based on the aforementioned concerns, the petitioners have filed this application.

On behalf of the 1st to 7th and 19th respondents, it has been submitted that the petitioners cannot maintain the instant application for the following reasons.

- a) The petitioners have failed to establish before this court that the instant application satisfies the conditions to be met for a writ of mandamus;
- b) The petitioners cannot demand a performance of duty that the said respondents are not permitted by law;

- c) The petitioners cannot seek to compel the respondents to act in contravention of the order of this Court in CA/WRIT/173/2015;
- d) The 1st to 7th Respondents have not been named in their person and a writ of mandamus cannot lie against the same;
- e) The Application and the reliefs prayed for are patently misconceived in law;
- f) The Petitioners are guilty of laches.

The main contention on behalf of the 8th to 18th respondents was also that the writ of mandamus prayed for by the petitioners in prayer (b) to the amended petition cannot be granted inasmuch as there is no statutory provision in the Education Ordinance or any other law that empowers or permits the 1st respondents to take over the management of an assisted school. Further, it was submitted that the petitioners have failed to disclose a legal right to the performance of a legal duty of taking over the management by the 1st respondent imposed by statute.

The following facts were submitted by the learned counsel for the petitioners: In the year 2013/2014, a special unit of the Ministry had investigated a series of malpractices, financial misappropriations, irregularities, corruption, sexual abuse of children, and failure to provide proper meals to the students in the school. The special investigation unit had found that many allegations had been proved and the children who were residents in the school were not safe. Consequent to the said findings, the Secretary to the Ministry of Education, by his letter dated 25.03.2015 directed the 5th respondent to take over the management and control of the said school with effect from 10.03.2015 until further notice. Then, the 8th to 18th respondents instituted Writ Application No. 173/15, seeking a writ of certiorari

quashing the said decision of the Secretary to the Ministry of Education. When the said writ application was taken up in the Court of Appeal, the parties had agreed to hand over the management of the school back to the Management Society.

Now, again, as the management society mismanaged and did not care about the welfare of the students, the learned counsel for the petitioner contended that the petitioners filed this application for writs seeking to hand over the management of the school to the 1st respondent. However, it should be stated that the learned counsel for the petitioners did not mention any legal provision that empowers the 1st respondent to take over the management of this school.

I wish to consider first, the following two issues regarding the maintainability of this application:

- I. Whether the petitioners could maintain this application without natural persons being named as the 1st to 7th respondents.
- II. Whether the performance of duty demanded by the petitioners is permitted in law, and if not, whether the petitioners could maintain this application.

Whether the petitioners could maintain this application without natural persons being named as the 1st to 7th respondents.

The decision of the case of **A. C. M. Haniffa v. The Chairman, Urban Council, Nawalapitiya** - 66 N.L.R. 48 directly deals with this issue. In this case, it was held as follows:

“In this application, the petitioner has made the Chairman, Urban Council, Nawalapitiya, the respondent. The petitioner should have named the person against whom a Writ of Mandamus can be issued. The Chairman, Urban Council, Nawalapitiya, is not a

juristic person. The Privy Council has pointed out that the juristic person must be created specially by statute (62 N. L. R. 169, 174, and at 182-183; 65 N. L. R. 253). Even if the Chairman, Urban Council, Nawalapitiya, was a juristic person, I fail to see how we can issue a Mandamus on a juristic person. **A Mandamus can only issue against a natural person**, who holds a public office. If such a person fails to perform a duty after he has been ordered by Court, he can be punished for contempt of Court.” (Emphasis added)

Mahanayake v. Ceylon Petroleum Corporation and Others (2005) 2 Sri L.R. 193 is a case where the petitioner sought a writ of Certiorari to quash the order of the 2nd Respondent Corporation terminating her services and a writ of Mandamus to compel the 01st and 02nd Respondents to reinstate the Petitioner as directed by the 03rd Respondent - Human Rights Commission. It was held that “A Writ of Mandamus could only issue against a natural person, who holds public office. Petitioner cannot seek a writ of mandamus against the 03rd Respondent the Human Rights Commission as it is not a natural person and the Petitioner has failed to name the members of the commission to seek this remedy.”

The Supreme Court in ***Gnanasambanthan v, Rear Admiral Perera and Others*** [(1998) 3 Sri L.R. 169 was called upon to consider the necessary parties to an application for writs of certiorari and mandamus and Amerasinghe J, held (at page 171): “In the matter before us, the petitioner seeks both a Writ of Certiorari and a Writ of Mandamus. In any event, the question before us is not whether the Chairman of REPIA could be cited *nominee officii*, which perhaps was possible in respect of the application for Certiorari but **not in respect of the application of Mandamus, ...**” (Emphasis added)

In view of the decisions of the aforementioned judicial authorities, it is clear that in a writ of mandamus, a natural person must be named as the respondent in order to grant relief to the petitioner. In the case at hand, the 1st to 7th respondents are not natural persons, and thus, I hold that a writ of mandamus could not be issued. Among the reliefs prayed for in the prayer to the amended petition, writs of mandamus prayed for in the prayer (b) and (d) are against 1st respondent and the 1st, 4th, 6th, and 7th respondents, respectively. Accordingly, those reliefs could not be granted in law.

Next, it has to be considered whether the writ of prohibition prayed for in prayer (c) to restrain the 8th to 18th respondents from continuing as office bearers or members of the Special Education Development Society of the said special school could be issued. In the circumstances, where the substantial relief of a writ of mandamus could not be issued to take over the management of the school by the 1st respondent, no writ of prohibition can be issued to suspend or remove the current board of management. If such an order is issued without making an order to take over the management of the school by somebody, it would result in the school being left without a designated manager or management board to manage its operations. Therefore, the writ prayed for in prayer (c) also could not be issued.

I hold that this application cannot be maintained and must be dismissed for the aforementioned reason of not naming natural persons as respondents.

Now, I proceed to consider the aforementioned second issue.

Whether the performance of duty demanded by the petitioners is permitted in law, and if not, whether the petitioners could maintain this application

In the case at hand, the petitioners, in the petition or in their written submissions, have failed to demonstrate that the 1st respondent has a legal right to take over the management of the assisted school. The only contention on behalf of the petitioners on the issue of whether the 1st respondent has a legal right to take over the management of the assisted school was that, on a previous occasion, the secretary to the ministry of education directed the 5th respondent, the Provincial Director of Education of Uva Province, to take over the management, and as a result, management was taken over by the 5th respondent for a limited period. The objection raised on behalf of all respondents was that, in the Education Ordinance or any other law, there is no provision empowering or permitting the Secretary to the Ministry of Education (1st respondent) to take over the management of the school.

Section 36 of the Education Ordinance reads as follows:

36(1) The Director-General may appoint as the manager of an assisted school any person recommended in writing by the proprietor of the school.

36(4) The Director-General may suspend or remove from office the manager of an assisted school either of the Director-General's own motion or upon a written request made in that behalf by the proprietor of the school.

The Director-General of Education is referred to as "Director-General" in the above section. He has the power to appoint, suspend or remove the management. Previously, the Special Education Development Services Society that managed the assisted school was suspended, and management was temporarily delegated to the provincial director of education in the Uva Province. However, no legal provision in any statute authorizes the first respondent to take over management of the

school. Therefore, it is apparent that the petitioners seek a writ of mandamus to direct the 1st respondent to perform a duty over which he has no legal right.

It must be noted that the foundation of the writ of mandamus is the existence of a legal right as held in ***Kaluarachchi v. Ceylon Petroleum Corporation and Others*** – SC Appeal No. 43/2013, Decided on - 19th June 2019. It was held in this case that “A court should not grant a writ of mandamus to enforce a right which is not legal and not based upon a public duty. Judicial intervention based upon legitimate expectation should not be used as a tool for enforcing a right purely of an equitable nature.”

In ***Credit Information Bureau of Sri Lanka V. M/S Jafferjee and Jafferjee (PVT) Limited***, (2005) 1 Sri L.R. 89, it has been stated that “There is rich and profuse case law on Mandamus on the conditions to be satisfied by the Applicant. Some of the conditions precedent to the issue of Mandamus appear to be:

(a) The Applicant must have a legal right to the performance of a legal duty by the parties against whom the Mandamus is sought (*R. V. Barnstaple Justices (1937) 54 TLR 36*). The foundation of Mandamus is the existence of a legal right (*Napier ex parte 1852 18 QB, 692 at 695*)

(b) The right to be enforced must be a "Public Right" and the duty sought to be enforced must be of a public nature.

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. .

(j) **Writ will not be issued where the Respondent has no power to perform the act sought to be mandated.**
(Emphasis added)

Hence, it is apparent that in the instant application, a writ cannot be issued to take over the management of the school by the 1st respondent because according to any provision of law, the Secretary to the Ministry of Education (the 1st respondent) has no powers to take over the management of the school.

As the petitioners seek a writ of mandamus directing the 1st respondent to take over the management of the Wellassa Subhagya Special School and since the 1st respondent has no legal right to take over the management, the application of the petitioners fails for this reason as well.

Apart from the aforesaid two issues, I believe that it is worth to consider a matter mentioned in the written submissions tendered on behalf of the 8th to 18th respondents. It has been mentioned that the amended petition filed by the petitioners does not disclose a demand and refusal which is also a condition precedent to the issue of a writ of mandamus. There is merit in this contention. A condition that has to be fulfilled before filing a writ of mandamus is that the person or persons affected by the neglect of performance of duty should have asked the public authority concerned to perform that duty and the public authority should have refused to perform that duty. If the public authority wrongfully refused or neglected to perform the duty only, the affected party could seek a writ of mandamus. In ***City Motor Transit Co. Limited v. Wijesinghe***- 63 N.L.R 156, the court cited a dictum of Lord Denman C.J in the ***King v. Brennock and Abergavenny Canal Navigation*** which declared that “it is not indeed necessary that the word ‘refuse’ or any equivalent to it, should be used; but there should be enough to show that the party withheld compliance and distinctly determines not to do what is required.”

Also, in ***Pathirana v. Goonesekera*** - 66 NLR 464 (467), a portion of the decision of ***The Queen v. Commissioners for Special Purposes of the Income Tax*** [3 (1888) 21 Q. B. D. 313] was cited as follows: "Where officials having a public duty to perform, refuse to perform it, mandamus will lie on the application of a person interested to compel them to do so. The rule would also apply where a public body fails to perform a public duty with which it is charged."

Anyhow, in England and India, exceptions to the demand-refusal rule have been set out in some cases. Exceptions to the demand-refusal rule specified in the Judgments of ***R v. Hanley Revising Barrister***, (1912) 3 KB 518, 531; and ***Guru Charan v. Belonia Vidyapith***, AIR 1955 Trip 33 are as follows:

- (a) Where it appears that a demand would be unavailing;
- (b) Where the respondent has by his own conduct made a demand impossible;
- (c) Where the duty sought to be enforced is of a public nature affecting the people at large and there is no one especially empowered to demand performance;
- (d) Where the duty is imperatively required by law of ministerial officer, particularly where the respondent has done an act which he calls a performance;
- (e) Where a person has by inadvertence omitted to do some act which he was under a duty to do and the time within which he can do it has passed.

However, the case at hand does not fall within the aforesaid exceptions. In the circumstances that the petitioners have not shown that they have made an application to the 1st respondent to take over the management, and he has refused, this application is liable to be dismissed for this reason as well. Even if this application was found to fall under one of the aforementioned

exceptional circumstances, the application must be dismissed for the two main reasons stated above.

Accordingly, the application for writs prayed for by the petitioners is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

M. Sampath K. B. Wijeratne J.

I agree.

JUDGE OF THE COURT OF APPEAL