

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

In the matter of an Application for
Writs of Certiorari and Mandamus
in terms of Article 140 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

Nalaka Chaminda Jayaweera.
29, "Sirila", Thihariya South Road,
Kalagedihena - 11875

PETITIONER

C.A. Case No. WRT-0362/19

Vs.

1. Sri Lanka Institute of Architects.
120/7, Vidya Mawatha,
Colombo 07.
2. Russell Dandeniya.
President,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha,
Colombo 07.
3. Veranjan Kurukulasuriya.
Immediate Past President,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha,
Colombo 07.
4. Rohana Bandara Herath.
Senior Vice President,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.

5. Dilumini De Mel.
Vice President,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha,
Colombo 07.
6. Nandaka Jayasinghe.
Secretary,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha,
Colombo 07.
7. Damith Premathilake.
Treasurer,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha,
Colombo 07.
8. Pumal Fernando.
Assistant Secretary,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha,
Colombo 07.
9. S. A. Lal Aberathne.
Assistant Treasurer,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.
10. Prasanna Silva.
Chairman - Board of Architectural
Education
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.

11. Migara Alwis.
Chairman - Professional Affairs Board
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.
12. Sagara Jayasinghe.
Chairman - Board of Architectural
Publications
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.
13. Salinda Rathugama.
Chairman - Board of management
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.
14. Surindu Basnayake.
Council Member,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.
15. U.S Perera.
Council Member,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.
16. Susil Lamahewa.
Council Member,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.
17. A. M. Nissanka
Council Member
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.

18. W. M. K. S. Bandara.
Council Member,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.
19. Vishaka Rathnayake.
Council Member,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.
20. Minda Isuru Gamanayake.
Council Member,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.
21. C. P. Samarasinghe.
Registered Member in Council,
Sri Lanka Institute of Architects
120/7, Vidya Mawatha, Colombo 07.
22. Shashini Lankika Wijewardene.
196/3, Hill Street, Dehiwala.

RESPONDENTS

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

COUNSEL : Canishka Witharana with Sawani Rajakaruna and
 Medha N. Gamage for the Petitioner.
 Dr. Asanga Gunawansa with Jithen De Silva,
 Christine Peiris and Nikita Gomez instructed by
 Dinusha Mirihana for the 1st to 21st Respondents.
 Ashan Stanislaus for the 22nd Respondent.

ARGUED ON : 06.06.2023

DECIDED ON : 13.07.2023

WICKUM A. KALUARACHCHI, J.

The petitioner in this writ application is a Chartered Architect by profession and also a cooperate member in the category of Associate of the Sri Lanka Institute of Architects (SLIA). The petitioner stated that the several arbitrary acts of the 1st to 21st respondents that resulted in violation of law have adversely affected and prejudiced the democratic and professional rights of the petitioner and the general public at large. Accordingly, as a person who has a sufficient public interest with regard to the issues pertaining to this application, the petitioner sought the following reliefs from this Court.

- Writ of certiorari quashing the decision of the 1st to 21st respondents to grant Cooperate Associate membership to the 22nd respondent of the Sri Lanka Institute of Architects, which decision is contained and disclosed in the documents marked as P-9B and P-11.
- Writ of mandamus directing the 1st to 22nd respondents to initiate investigation in compliance with regulation 4.4 and the other provisions of regulations marked as P-1 pertaining to the complaint submitted by the petitioner marked as P-4.

Statements of objections have been filed on behalf of the 1st to 21st respondents and on behalf of the 22nd respondent. The learned Counsel for the petitioner, the learned counsel for the 1st to 21st respondents, and the learned counsel for the 22nd respondents made oral submissions at the hearing of this application.

Briefly, the facts relating to the application are as follows. On or about 29.01.2019, the petitioner observed that the name of the 22nd

respondent displayed on the notice board of the 1st respondent as a person to be admitted as an associate member of the 1st respondent's institute. The petitioner immediately submitted a complaint objecting to the admission of the 22nd respondent as an associate member of the 1st respondent mainly on the ground of using the title "Architect" in form 18 under the Companies Act (P-3) and thereby consented to become a director and thereafter function as a member of the Board of Directors of a company incorporated under the Companies Act in the name and style of D.H Wijewardena Associates (Private) Limited in 2014 violating Section 12(4) of the Sri Lanka Institute of Architects Law No. 1 of 1976 (as amended by Act No.14 of 1996). The basis of the petitioner's complaint was that when the 22nd respondent was a student member of the Sri Lanka Institute of Architects, she wrongfully used the title "Architect".

It transpires from the documents of the case that the 22nd respondent was a student member from 2011 and from 2018, she was a graduate member. On 15.08.2014, the 22nd respondent placed her signature to the aforesaid form 18(P-3), mentioning her occupation as "Architect".

The petitioner has received the letter dated 28th March 2019 (P-6) from the 6th respondent stating that the complaint (P-4) of the petitioner had been referred to the investigation committee as per the decision of the council. Thereafter, the petitioner received a letter dated 20th May 2019 (P-8) signed by the 6th respondent stating that the council had decided to refer the complaint of the petitioner to the legal consultant to get clarification and after studying the documentation, the legal consultant had informed that there was no material for further investigation and the 22nd respondent had not violated the regulations of Sri Lanka Institute of Architects. In the meantime, the petitioner stated that he became aware of the Secretary's report presented to the 1st quarterly general meeting of the 1st respondent held on 31st May 2019, in which, it is stated that the 22nd respondent had been awarded the cooperate

membership in the category of Associate. Subsequently, the petitioner has received the letter dated 24th June 2019 (P-11) from the 6th respondent stating that the matter had been considered and closed.

The learned Counsel for the petitioner contended that there was no investigation regarding the petitioner's complaint and the same was not considered according to Clause 4.4 of the Gazette Extraordinary No. 2041/18 dated 2017 October 17 (P-1) and thus violated the procedure laid down therein. Clause 4.4 of the said gazette deals with the procedure in relation to "Investigation of complaints prior to award of membership". On the aforesaid ground of violating the stipulated procedure, the petitioner seeks the writs prayed for in the petition.

In reply, the learned Counsel for the 22nd respondent contended that the 22nd respondent has not violated section 12(4) of the Sri Lanka Institute of Architects Law because there was no "take" or "use" of the title "Architect" and the 22nd respondent merely referred "Architect" as her occupation in the aforesaid form 18. Further, the learned Counsel submitted that the 22nd respondent did not practice as an architect at that time. Showing the documents such as P-4 and P-5, the learned Counsel for the petitioner contended that in those documents the title "Architect" has been used in front of the person's name and that this is what is meant by Section 12(4) as "using" the title "Architect". However, the 22nd respondent, the learned Counsel submitted, has only mentioned the word "Architect" as her occupation when filling out form 18 under the Companies Act for a need of her father's company. The learned Counsel for the 22nd respondent contended further that the Council of Sri Lanka Institute of Architects decided after an investigation that the 22nd respondent had not violated the regulations of the Sri Lanka Institute of Architects.

Both the learned Counsel for the 22nd respondent and the learned Counsel for the 1st to 21st respondents pointed out that as per clause

4.2.1.1. of the aforesaid Gazette Extraordinary, objections must be forwarded within one month from the date of displaying the name of the applicant who applied to become associate member on the notice board of the SLIA. Both the learned Counsel contended that the petitioner has not objected within the prescribed one month and therefore, the petitioner's complaint should have been rejected even without consideration.

First, I wish to consider what kind of reliefs have been prayed for by the petitioner in this application. The petitioner seeks a writ of certiorari to quash the decision contained in documents P-9B and P-11. P-9 is the report of the secretary of the Sri Lanka Institute of Architects. The place where the 22nd respondent's name appears as a new associate member has been marked as P-9B. Hence, P-9B is not a decision. P-11 is a letter sent by the secretary of the Sri Lanka Institute of Architects to the petitioner stating that "the council decision conveyed to you in our previous letter dated 20th May 2019, the matter is considered closed".

At the hearing, the learned Counsel for the petitioner stated that the decision that the petitioner sought to quash is the decision contained in the document marked X-2 filed with the counter objections. So, the petitioner is now seeking to quash a decision different from the decision that he sought to quash by his petition.

The other relief prayed for in the petition is to grant a writ of mandamus directing the 1st to 22nd respondent to initiate investigation in compliance with regulation 4.4 and the other provisions of regulations. Direction for an investigation is necessary only if a proper investigation has not been conducted. This will be addressed later in this judgment.

Now, I proceed to consider the issue raised by the learned Counsel for the 1st to 21st respondents and the learned Counsel for the 22nd respondent that the petitioner had not objected within the period of one

month as specified in clause 4.2.1.1. of the aforesaid gazette and thus his objection must be rejected *in limine*. Undisputedly, as per the said clause, objections have to be raised within one month from the date of displaying the names of the applicants on the notice board of the SLIA. The petitioner's objections marked P-4 has been sent on 26.02.2019. In the said letter of objections, it is stated SLIA- Part III- Final results appeared on the SLIA notice board on 28.01.2019. As evident from the document marked A-2, the 22nd respondent's name has been displayed on the notice board as an applicant for associate membership - SLIA on 30.04.2019. Therefore, it is apparent that the petitioner has forwarded his objections within one month from the date of displaying the final results and not within one month from displaying the name of the 22nd respondent as an applicant. According to subsection 2 of Clause 4.2.1.1. if no objection is forwarded within the period of one month, the council shall admit such applicant as an associate member of the Institute. As it is apparent that the petitioner has not made his objections within the stipulated period of one month, there was no reason not to admit the 22nd respondent as an associate member and there was no procedural violation.

The reply of the learned Counsel for the petitioner to the aforesaid objection was that the one-month period is immaterial as the council proceeded with the complaint/objection made by the petitioner.

Anyhow, I proceed to consider what steps have been taken by the SLIA with regard to the objections raised by the petitioner. It appears that the petitioner has made a similar complaint against the 22nd respondent in 2017 as well. The said complaint is marked A-3. As evident from the document marked X-1, the said complaint was rejected on the ground that the petitioner had failed to respect and maintain confidentiality.

The learned Counsel for the petitioner contended that when the petitioner received the letter X-1 stating that his complaint is rejected,

he got the impression that nothing happened to his complaint and it was just rejected. However, referring to the document P-8, the learned Counsel contended that the council has investigated the matters relating to the said complaint and when the petitioner made the same complaint in 2019, it has been informed by the letter P-8 that the allegations have been already investigated and there is no material for further investigation. He contended that subsequently, he received the letter P-11 stating that the matter is considered closed.

The issue raised by the learned Counsel for the petitioner was that informing the petitioner by X-1 that his 2017 complaint has been rejected and thereafter, investigating the matter without the knowledge of the petitioner is wrong. The procedure for disciplinary inquiries is outlined in Clause 9 of the aforesaid gazette. According to Clause 9(1), in the event of a breach of a regulation by a member, investigations could be carried out on a complaint of anybody and even the council itself or its standing committee can inquire into the matter. Hence, even though the petitioner was informed that his complaint was rejected, the council has the authority in investigating the matters disclosed from the said complaint.

As per the documents marked A-6(a) to A-6(e), and A-7, a proper investigation has been carried out by collecting necessary information. Document A-8 is the report forwarded to the council after concluding the investigation. According to the report, the conclusion of the investigating committee was that there is no violation of the regulations of SLIA by the 22nd respondent. Apart from the 22nd respondent, the report refers to three others also and states further that there is no merit in various allegations leveled against them in the letter by architect Nalaka Jayaweera (the petitioner). Furthermore, it is recommended by the said report to exonerate all four of them from all allegations.

The petitioner's position was that he made a similar complaint in 2019.02.26 which is the subject matter of this application on the impression that his first complaint was rejected without investigation. That may be the reason for sending a similar complaint again. However, what should be considered by this court is whether the allegations made against the 22nd respondent have been properly investigated in accordance with the specified investigation procedure. If the same allegations have been investigated previously, there is no need to investigate them again, when a similar complaint is received subsequently. According to Section 8(4A)(b) of the Sri Lanka Institute of Architects Law (as amended by Section 6 of the Act No 14 of 1996) where an Investigating Committee appointed under paragraph (a) has reported to the Council that a prima facie case has not been made out against such member, Architect or Architectural Licentiate, as the case may be, the Council shall not proceed further with the complaint.

When the investigating committee decided in 2017 that there was no violation of regulations of SLIA by the 22nd respondent and there was no merit in various allegations leveled by the petitioner, once again the petitioner made a similar complaint against the 22nd respondent in 2019. So, the council referred the 2019 complaint to their legal consultant and sent P-8 stating that *"the legal consultant has informed that there is no material for further investigation and the status of Ms. Shashini Wijewardena (22nd respondent) as referred in the complaint has not violated the SLIA regulations."* Once a complete investigation had been carried out and found that the 22nd respondent has not violated the regulations of SLIA, it is obvious that it is not necessary to carry out another investigation for a similar complaint without any new material. The only decision that the Council could take was to stop proceeding with the 2019 complaint, under Section 8(4A)(b), as no prima facie case has been made out. Hence, it is perfectly correct in sending the letter P-11 stating that the matter is considered closed.

The learned Counsel for the petitioner also complained that the decision was not communicated to the petitioner. According to clause 4.4 of the said gazette, the decision of the council shall be conveyed under registered post to the relevant person against whom the complaint was made and the complainant within two weeks from the date of the receipt of the report by the council. P-11 is the decision of the council which states that the matter was closed. The said decision is conveyed to the petitioner and he has annexed the said documents with the petition.

However, according to clause 9.1(6) of the gazette, the investigating committee shall submit a report containing the procedure adopted, its findings, and other relevant information in the form of a written report to the council in a confidential manner. All the necessary documents and correspondence shall be annexed to the said report. Therefore, the report prepared by the investigating committee containing its findings and other relevant information is confidential and the petitioner is not entitled to the same. The petitioner is entitled only to obtain the decision of the council. The said decision has been conveyed to the petitioner as stated previously. Therefore, the decision to close the matter pertaining to the complaint made by the petitioner has been taken after following the correct legal procedure and there is no violation of the procedure.

It is to be noted that in this writ application, this Court will not reconsider whether the decision of the investigating committee and the council that there was no violation of regulations is correct or not. In ***A.I.V. Fernando v. W.D.L Perera, Controller of Immigration and Emigration***- C.A. Application No. 1115/98, decided on 04.08.2000, it was held that when the court exercises writ jurisdiction, it does not review the case on the merits. It only looks for the legality of the decision.

Also, the Court of Appeal in ***Jefferjee v. Commissioner of Labour and Others*** - (2008) 1 Sri L.R 12, following the case of ***Best Footwear (Pvt)***

Ltd., and Two Others v. Aboosally, Former Minister of Labour & Vocational Training and Others - (1997) 2 Sri L.R 137 stated that “the remedy by way of certiorari cannot be made use of to correct errors or to substitute a correct order for a wrong order. Judicial review is radically different from appeals, when hearing an appeal, the Court is concerned with the merits of the decision under appeal. In appeal, the appellate Court can modify, alter, substitute or rescind the order or decision under appeal. (Vide Article 138 of the Constitution that gives the forum jurisdiction to the Court of Appeal for the correction of all errors in fact, or in law, committed by Courts of first instance, tribunal or other institution.) In Judicial review, the Court is concerned with its legality and cannot vary, modify, alter or substitute the order under review. On appeal, the question is right or wrong, on review, the question is lawful or unlawful. Instead of substituting its own decision for that of some other body as happens when an appeal is allowed, a Court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not.”

In the case at hand, no illegality has been occurred in arriving at the decision that there was no violation of the regulations of SLIA by the 22nd respondent. Also, the decision has been taken within the jurisdiction of the Council of Sri Lanka Institute of Architects after adopting the correct investigation procedure. Therefore, I hold that the aforesaid circumstances do not warrant exercising the writ jurisdiction of this court.

Before concluding, it is worth to be noted that according to the report of the investigation committee marked A-8, the committee found no evidence to prove that the D.H Wijewardena Associate (Pvt) Ltd had engaged in providing architectural services (page 8 of the report) although the key issue raised by the petitioner was that the said company has engaged in providing professional services relation to architecture. In addition, the investigating committee found that

“D.H Wijewardena Associate (Pvt) Ltd is not an entity registered with the SLIA” and thus the said company “does not come under the definition of practice under the SLIA, therefore regulations are directly not applicable to the said company” (page 9 of the report). Therefore, it appears that the investigating committee concluded that the 22nd respondent did not violate SLIA regulations after considering all relevant factors.

For the foregoing reasons, the application for writs prayed for in the petition is dismissed subject to costs of Rs.50,000/-.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M. Sampath K. B. Wijeratne J.

I agree.

JUDGE OF THE COURT OF APPEAL