

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

K. A. Farhan,
No.36, Church Street, (Palliya Para)
Godapitiya,
Akuress.

Petitioner

C.A.Writ No.329/2022

Vs

1. M.D.J.Vassage (Air Vice Marshal)
Commanding Officer,
Sri Lanka Air Force Head Quarters,
Sri Lanka Air Force.
Colombo.
2. R.P.D.M.J. Ranrajeewana,
Commanding Officer,
28th Regiment Wing,
Sri Lanka Air Force.
3. S.K.Pathirana,(Air Marshal)
Commander,
Sri Lanka Air Force Head Quarters,
Sri Lanka Air Force.
Colombo.
4. M.D.A.P.Payoe,(Air Vice Marshal)
Chief Staff,
Sri Lanka Air Force Head Quarters,
Sri Lanka Air Force.
Colombo.
5. W.L.S.Alwis,
OIC- Motor Traffic Division,
Police Station,
Maligawatte.

6. Hon. Attorney-General,
Attorney General's Department,
Colombo 12.

Respondents

Before : **N. Bandula Karunarthna, J. (P/CA)**
M.Ahsan R.Marikar, J.

Counsel : H. Jayalath Nanayakkara for the Petitioner.
Yuresha Fernando DSG for the State.

Argued on : 28.02.2023

Decided on : 08.05.2023

M. Ahsan R. Marikar, J.

Introduction

- 1) The Petitioner made this application on 2nd September 2022 and had sought the following reliefs prayed for in the prayers b, c, d, e and f.
 - b. to issue a writ of certiorari quashing the aforesaid decision dated 17.05.2022 made by the 1st Respondent to interdict the petitioner from Sri Lanka Air Force contained in P3.
 - c. to issue a writ of mandamus directing the 1st to 4th Respondents to reinstate the petitioner to the previous position in Air Force.
 - d. to issue a writ of prohibition prohibiting the 1st to 4th Respondents from proceeding further as per the said decision against the petitioner.

- e. to issue an interim order directing the 1st to 4th Respondents to stay the operation of implementing the decision taken by them contained in P3.
- f. to make an interim order restraining the respondents from taking any steps in pursuance of the said decision contained in P3.

Background of the case

- 2) The Petitioner had stated that he is a citizen of Sri Lanka and is attached to the Sri Lankan Air Force from the year 2007 and continued to serve as a Corporal in the Sri Lanka Air Force Intelligent Unit until he was interdicted on 6th May 2022.
- 3) The Petitioner has pleaded that the Petitioner owns a three-wheeler and on 26th March 2022 the Petitioner's three-wheeler had been taken away by a person not known to the Petitioner.
- 4) Subsequently, the Petitioner had received a call that the three-wheeler owned by him had been stopped by the Maligawatte Police at a police road block around 12.50am.
- 5) When the Petitioner visited the scene he was arrested around 2.30am and handed over to the Air Force Police.
- 6) The Petitioner was in the custody of the Air Force Police for over a month and he was charged with the following counts by the OIC Traffic Maligawatte Police.

- 7) The said counts were disobeying police signal, reckless driving, driving without a revenue license and driving under the influence of drugs. The said case is pending as the Petitioner had pleaded not guilty.
- 8) Later, the Petitioner had received a letter that he had been interdicted in terms of Section 102 (1) and Section 43 of the Air Force Act.
- 9) The contention of the Petitioner is that the Air Force Act does not empower to interdict an Air Force Corporal for a minor traffic offence and the said decision taken by the Air Force is arbitrary, illegal and without any jurisdiction.
- 10) On the said grounds the Petitioner had sought *Writ of Certiorari*, *Writ of Mandamus* and *Writ of Prohibition* and an interim order against the 1st to 4th Respondents.

Limited Objections

- 11) On behalf of the Respondents the limited objections had been filed and the Maligawatte Police on 26th March 2022 had sent a police message R1 that the Petitioner was arrested by the police for negligent driving and on suspicion of addiction to dangerous drugs.
- 12) By R2 to R6 documents it is supported that the Petitioner had consumed dangerous drugs at the time the incident took place.
- 13) Under the said circumstances the Respondents had detained the Petitioner by acting under Section 102(1) and 43 of the Air Force Act.

- 14) The said facts are supported by documents marked and produced as R6-R8.
- 15) When this matter was supported on 28th February 2023 to obtain notices and an interim order, the Deputy Solicitor General Yuresha Fernando objected for issuing notices and resisted for granting interim relief.
- 16) Considering the submissions made by both parties and the documents, we have to address the following disputes to consider whether the notices and interim order can be issued.
 - i) Was the Petitioner serving as a Corporal in the Sri Lankan Air Force?
 - ii) Have the Air Force Police detained the Petitioner for 28 days from 26th March 2022?
 - iii) Has the Petitioner issued a letter dated 17th May 2022 that he had been interdicted in terms of Section 102(1) and Section 43 of the Sri Lanka Air Force Act?
 - iv) Can the Petitioner maintain this action under a writ jurisdiction to get the reliefs prayed for in the prayer of the petition dated 2nd September 2022?

Was the Petitioner serving as a Corporal in the Sri Lankan Air Force?

- 17) Both parties have admitted that the Petitioner was serving as a Corporal of the Sri Lankan Air Force.

Have the Air Force police detained the Petitioner for 28 days from 26th March 2022?

- 18) The Petitioner had admitted on 26th March 2022 when he confronted the Maligawatte Police, the Petitioner was arrested and handed over to the Air Force Police. This had been done in accordance with the Provisions of the Air Force Act.
- 19) Therefore, disciplinary action had been taken subject to the Air Force Act and cannot be invoked in a writ jurisdiction as the Respondents have not violated or done any wrongful act.

Has the Petitioner issued a letter dated 17th May 2022 that he had been interdicted in terms of Section 102(1) and Section 43 of the Sri Lanka Air Force Act?

- 20) The Petitioner had received P3 letter from the 4th Respondent. The Counsel for the Petitioner argued that the date referred to in the said charge sheet is incorrect and the Air Force Act does not empower to interdict an Air Force Corporal on any circumstance.
- 21) Further the offense under the Motor Traffic Act for which the Petitioner is charged by the Maligawatte Police is a minor offence.
- 22) Thus, the interdiction of the Petitioner is illegal and unfair. The Deputy Solicitor General who appeared for the Respondents produced the JMO's report confirming that at the time of the Petitioner's arrest by the Maligawatte Police he was under the influence of a drug detected as 'ICE'.

- 23) The aforesaid facts referred to in the above paragraph is supported by the documents marked and produced as R2 to R6. The JMO has confirmed that at the time of the arrest the Petitioner was under the influence of a drug mainly ICE.
- 24) In the said circumstances the action taken by the Air Force is an administrative step and it has not violated any rights of the Petitioner.
- 25) When referring to Section 102(1) and Section 43 of the Air Force Act No. 41 of 1949 the provisions are stated as follows;

Every person subject to this Act who neglects to obey any general, local or other order shall be guilty of an air-force offence and shall, on conviction by a court martial, be liable, if he is an officer, to be cashiered or to suffer any less severe punishment in the scale set out in section 133, and, if he is an airman, to suffer simple or rigorous imprisonment for a term not exceeding three years.¹

Where a commanding officer deals summarily with a case in which an airman (not being a warrant officer) under his command is charged with the commission of any offence, he shall, after hearing the evidence, acquit the accused if he finds the accused not guilty, or convict the accused if he finds the accused guilty, and after conviction of the accused may...² if the offence is drunkenness, order him to pay a fine not exceeding twenty rupees, either in addition to or without any other punishment;³

¹ Air Force Act No. 41 of 1949, Section 102(1).

² Ibid, Section 43.

³ Ibid, Section 43(b).

- 26) We observe the reliefs sought by the Petitioner in the prayer of the petition dated 2nd September 2022, are *Writ of Certiorari*, *Writ of Mandamus* and *Writ of Prohibition* against the 1st to 4th Respondents.
- 27) The right of the Writ sought by the Petitioner should be considered in the nature of this application whether the decision taken by the authority is lawful or unlawful.
- 28) On that basis this Court has the power for the judicial review.
- 29) In the instant application the Petitioner has failed to prove a single fact that the Respondents have acted unlawfully and or excessive power had been used to decide the interdiction of the Petitioner.
- 30) In the decision of **Geeganage V. Director General Customs**⁴, Gunwardene J. had made the following observations;

*“The above grounds are to be designated as errors of law, and all or any one of which grounds, the impugned decision made by the 2nd respondent has to be quashed. **Animanic**⁵ decision seems to suggest that any error of law will have the effect that the body subsequently acts without power and so denying that some errors may be made within jurisdiction and therefore immune from judicial review. The Animanic (majority) decision also held that not only errors with respect to preconditions to the exercise of power may lead to acting without jurisdiction but also errors made in the course*

⁴ [2001] 3 SLR 179 at pg 194, 195.

⁵ *In Re Animanic* [1969] 2 AC 147.

*of exercising the power. This issue is very important because if error of law goes to jurisdiction that expands the scope of judicial review and the possibility of intervention by the courts. Animinic is important because it held that any error of law may well be a jurisdictional error and therefore reviewable under the ultra vires doctrine. There has been some doubt as to whether or not Animinic abolished entirely the distinction between jurisdictional and non-jurisdictional errors. This appears to have been resolved by the House of Lords in **R v Lord President of the Privy Council, ex parte**⁶, in which it was held that; "in general any error of law made by an administrative tribunal or an inferior court in reaching a decision can be quashed for error of law". The ground for this is the ultra vires doctrine that these bodies had been conferred their decision making powers by the Parliament presumably on the basis that it would be exercised on the correct legal basis. The errors law explained above therefore, renders the relevant decision (of the 2nd respondent) void."*

- 31) In *Writ of Mandamus* the Petitioner has to prove injustice caused to him is an order to a Mandamus. That fact is decided in **Karavita and Others V. Inspector General of Police**⁷.

⁶ [1993] AC 682 at 682.

⁷ [2002] 2SLR at pg 287.

32) Further, the 3rd relief sought by the Petitioner is *Writ of Prohibition*. As the aforesaid facts and the decided cases, we are of the view no necessity arises to forbid the proceedings commenced by the Respondents against the Petitioner.

CONCLUSION

33) In the said circumstances the Petitioner's application does not have any grounds to consider the judicial review to issue a writ as the Respondents have not violated any statutory provisions of the Air Force Act. On that we dismiss the petition dated 2nd September 2022 subject to payment of cost.

Judge of the Court of Appeal

N. Bandula Karunarathna J. (P/CA)

I agree

President of the Court of Appeal