

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

*In the matter of an Application for a
mandate in the nature of Writs of Certiorari
and Mandamus under and in terms of
Article 140 of the Constitution.*

Suwada Hannadige Ranjith Wasantha
No-C-15, Mahaweli Niwasa,
New Town, Polonnaruwa.

Petitioner

CA/WRIT/248/2022

Vs.

1. Mr. Keerthi B. Kotagama
Director General,
Mahaweli Authority of Sri Lanka,
No 500, T. B. Jayah Mawatha,
Colombo 10.
2. Mr. D. M. N. J. Dhanapala
Deputy Director General (Technical
Service),
Mahaweli Authority of Sri Lanka,
No 500, T. B. Jayah Mawatha,
Colombo 10.
3. Mrs. M. W. R. Nishanthi Delphet
Director (Human Resources and
Administration),
Mahaweli Authority of Sri Lanka,
No 500, T. B. Jayah Mawatha,
Colombo 10.
4. Mrs. Himali Yalinga
Director (Internal Audit),
Internal Audit Division,
Mahaweli Authority of Sri Lanka,
No 500, T. B. Jayah Mawatha,
Colombo 10.

5. Mr. P. G. Noel Jayasiri
Resident Project Manager,
Resident Project Manager's office,
Mahaweli Authority of Sri Lanka,
System B, Welikanda.
6. Mahaweli Authority of Sri Lanka
No 500, T. B. Jayah Mawatha,
Colombo 10.

Respondents

Before: Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel: Saliya Pieris PC. with Pasindu Thilakarathna for the Petitioner.

Mihiri De Alwis SC for the Respondents

Supported the contents of the motion dated: 04.05.2023

Decided on: 08.09.2023

ORDER

This is a concluded case where the final judgement has been delivered on 31.03.2023 dismissing the Application of the Petitioner. The learned State Counsel who appears for the Respondents informs Court that the Petitioner has already lodged a leave to appeal application against the said judgement and such application is still pending before the Supreme Court.

The Petitioner by motion dated 04.05.2023 pleads that the said judgement be set aside claiming that it was made per incuriam. The Petitioner's contention is that this Court has delivered the judgement without being able to peruse and consider the counter affidavit. The Court at the time of delivering the judgement observed that the Petitioner has not filed a counter affidavit.

It is noted that the Petitioner has affirmed an affidavit on 02.02.2022 under the heading of "counter affidavit" whereas the Respondents have filed a statement of objections on a later date i.e., 26.10.2022. The learned Registered Attorney of the Petitioner has tendered the

said counter affidavit affirmed on 02.02.2022 to the Registry of this Court on 03.02.2023. However, it seems as per the endorsements of the journal entries that such affidavit has been filed of record on 03.05.2023.

Nevertheless, both of us carefully perused each and every averment of the said counter affidavit after the said motion was filed by the Petitioner on 04.05.2023. Having perused such affidavit and also taking into consideration the firm view taken by this Court in determining the case, we have unanimously arrived at the decision that the material reflected in several averments of the said counter affidavit are not sufficient to substantially alter the substance of the judgement pronounced by us.

In light of the above, it would be a futile exercise to originate an inquiry to inspect whether the Petitioner had affirmed a counter affidavit before the respondents filed their statement of objections; or why such counter affidavit was not filed of record before pronouncement of the judgment.

Moreover, the learned President's Counsel for the Petitioner heavily relied on *Jeyaraj Fernandopulle v. Premachandra De Silva and others (1996) 1 Sri L. R. 70* in which the Supreme Court has provided an emphasis on what would be regarded as a decision per incuriam. We are of the view that this is not a fit application which necessitate this Court to use its inherent powers to rectify or set aside the said judgement based on the notion of per incuriam.

The application made by the Petitioner by way of the said motion dated 04.05.2023 is refused.

Sobhitha Rajakaruna J.
Judge of the Court of Appeal

Dhammika Ganepola J.
Judge of the Court of Appeal