

**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 *Writ of Certiorari, Mandamus and
Prohibition* under article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka**

Ragupathi Upulwan Serasinghe,

26/9, Wickramasinghepura,

Battaramulla.

PETITIONER

CA/WRIT/315/2014

Vs,

1. M.D. Ranjani Jayakody,
Director General,
Department of Sports Development,
No.9, Philip Gunawaradana Rd,
Colombo 07.
2. R.B. Wickramasinghe,
Assistant Director (Sports),
Department of Sports Development,
No.9, Philip Gunawaradana Rd,
Colombo 07.
3. A.M. Jayawickrama,
Secretary,
Ministry of Sports,
No.9, Philip Gunawaradana Rd,
Colombo 07.

4. Hon. Dayasiri Jayasekara,
Minister of Sports,
Ministry of Sports,
No.9, Philip Gunawaradana Rd,
Colombo 07.
5. Rodney Mason,
No.99, Rosmead Place,
Colombo 07.
6. Mohommed Ashar Hameem,
No.232, Old Thangalle Rd,
Kotuwegoda,
Peliyagoda.
7. Ananda Jayasekara,
No.1, Negombo Rd,
Peliyagoda.
8. K.P.J.J. Jayasekara,
No.14, Peiris Place,
Off Quarry Rd, Dehiwala.
9. Shehan De Tissera,
No. 722/10, Pannipitiya Rd,
Battaramulla.
10. Thilak Peiris,
No.55, Bishop Rd,
Wattala.
11. D.W. Gunasekara,
No. 51A, Singhepura,
Battaramulla.

12. T.Nandasiri Gamini,
No. 11/B, Ramani Mw,
Negombo.
13. Sunanda Piyal,
Rest House,
Kuliyapitiya.
14. M.S. Gammanpila,
C/O Sri Lanka Auto-sports Drivers Association,
No. 14C 2/1, Thalawathugoda,
Pita- Kotte.
15. F.D. Wijesinghe,
C/O Sri Lanka Auto-sports Drivers Association,
No. 14C 2/1, Thalawathugoda,
Pita-Kotte.
16. R.A.K. Gray,
C/O Motor Racing Association,
No. 1 B 3, Daham Mw,
Maharagama.
17. David Leonard Todd,
C/O Motor Racing Association,
No. 1 B 3, Daham Mw,
Maharagama.
18. N.L.L. Krishnaratne,
C/O Sri Lanka Association of Racing Drivers and Riders,
No. 128, Amara Building,
3rd Floor,
No.128, High Level Rd,
Nugegoda.

19. R.Gamini Kavikara,
C/O Sri Lanka Association of Racing Drivers and Riders,
No. 128, Amara Building,
3rd Floor,
No.128, High Level Rd,
Nugegoda.
20. Pubudhu Wickrama,
No. 65/25, Kumaragewatta Rd,
Pelawatte,
Battaramulla.
21. H.M.M.B. Herath,
C/O Ceylon Motor Sports Club,
No. 2/1, Hunupitiya Rd,
Colombo 02.
22. T.S. Jinasena,
C/O Ceylon Motor Sports Club,
No. 2/1, Hunupitiya Rd,
Colombo 02.
23. W.G. Andrew Silva,
No.23, Jinnah Rd,
Issadeen Town,
Matara.
24. Dhakshina Amarasinghe,
C/O Southern Motor Sports Club,
No.215, Galle Rd,
Pamburana,
Matara.

25. Ajith Hemachandra,
C/O Sri Lanka Motor Cycle Club,
No. 92/8, Ananda Rajakaruna Mw,
Colombo 10.
26. Anil Jayakody,
C/O Sri Lanka Motor Cycle Club,
No. 92/8, Ananda Rajakaruna Mw,
Colombo 10.
27. P.K.K. Sanjeewa Piyasena,
No.284, Vauxhall Street,
Colombo 02.
28. J.S.R. Samuel,
No. 121/7, Duwa Rd,
Baddegama.
29. H.D.I.R. Halpita,
No. 542/2, Gal Edanda Rd,
Gonawela,
Kelaniya.
30. Bri Ponnambalam,
Cars R Us (Pvt) Ltd,
No. 51, Braybrook Place,
Colombo 02.
31. Nawaz Fowzie,
No. 80/1B, Layards Rd,
Colombo 05.
32. Chula Ratwatte,
Managing Director,

National News Paper
No. 742, Maradana Rd,
Colombo 10.

33. Suren Cooke,
No. 527/2, Bullers Rd,
Colombo 08.

34. A.A. Jayatissa,
No. 39, Buthgamuwa Rd,
Rajagiriya.

35. Dinesh Jayawardena,
24, Cambridge Place,
Colombo 07.

RESPONDENTS

Before: **Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

Counsel: Viran Corea with S. de Fonseka for the Petitioner

Manohara Jayasinghe SC for the 1st to 4th Respondents

Kuvera de Zoysa PC with Thusitha Nanayakkara for the 5th- 13th, 18th – 20th 23rd-30th
and 35th Respondents

Vinod Wickramasuriya with Nihara Randeniya, Deepali Pathirana inst by Srimal
Jayasinghe for the 14th-17th, 21st-22nd Respondents

Nigel Bartholemeusz inst. By L.W. Kularatne for 31st, 32nd and 33rd Respondents

Argued on: 12.05.2015, 23.06.2015, 22.07.2015

Written Submissions on: 12.10.2015

Judgment on: 31.03.2016

Order

Vijith K. Malalgoda PC J

Petitioner to the present application Ragupathi Upulwan Serasinhe had come before this court seeking inter alia,

- d) A Writ in the nature of *Writ of Certiorari* to quash the decision of the 1st Respondent to conduct elections of the Executive Council of the Sri Lanka Automobile Sports on 27th August 2014.
- e) A Writ in the nature of *Writ of Prohibition* preventing the 5th to 30th Respondents from holding office and/or performing functions as the Executive Council of the Sri Lanka Automobile Sports
- f) A Writ in the nature of *Writ of Mandamus* compelling the 4th Respondent to direct the 20th, 31st, 32nd, 33rd, and 34th Respondent members of the interim committee of the Sri Lanka Automobile Sports to resume duties as per the letter of appointment dated 7th May 2013 appointing them to the said interim committee until the conduct of a proper election at the Annual General Meeting.
- g) A Writ in the nature of *Writ of Mandamus* compelling the 20th, 31st, 32nd, 33rd and 34th Respondent members of the interim committee of the Sri Lanka Automobile Sports to convene an Annual General Meeting for the purpose of lawfully conducting an election of the Executive Council of the Sri Lanka Automobile Sports

When this application was supported for notices and interim relief as prayed in paragraphs (b) and (c) the court after considering the submissions made by all the parties, decided not to grant interim relief but decided to take up this matter without delay giving a time frame to the parties to file objections before this court.

As agreed before court, parties stick to the time frame given by court but the arguments took a long time than expected since the parties heavily contested the issues raised before us.

However as observed by this court there was a clear division among the parties represented before this court and some of the Respondent supported the position taken up by the Petitioner, where as the other Respondents justified the impugned decision and the subsequent events took place based on the said decision.

Petitioner who has served as the treasure of the Sri Lanka Automobile Sports (previously known as Sri Lanka Association of Motor Sports) from 2006 to 2013 and currently a committee member of the Sri Lank Auto-sports Drivers Association, has complained before this court of a decision by the 1st Respondent to conduct the elections in respect of the Executive Council of the Sri Lanka Automobile Sports which according to the Petitioner, was made acting in excess of the power vested in him and disregarding the matters the 1st Respondent should have considered before taking such decision.

As admitted by all the parties before this court, an Annual General Meeting of Sri Lanka Automobile Sports was held on 31st March 2013 at which office bearers were elected in its ordinary course of business. However subsequent to the said Annual General Meeting several complaints were made to the 4th Respondent Minister, alleging ineligibly of members elected through the said Annual General Meeting. The 4th Respondent under the power vested in him under section 32 and 34 (1) of the Sports Law No 25 of 1973 as amended, dissolved the Sri Lanka Automobile Sports and appointed an interim committee comprising of the 20th, 31st, 32nd, 33rd and 34th Respondents on or about 7th May 2013 acting under section 33 of the said Sports Law.

The main complaint before this court by the Petitioner was a subsequent decision by the 1st Respondent to conduct an election to select the Executive Council without following the proper procedures and acting in excess of the powers vested on him.

In support of the said position the Petitioner had submitted before this court,

- a) The 1st Respondent exceeded her powers in calling for an election
- b) The 1st Respondent and/or other relevant Respondents failed to consider that the decision as to the arrangements of the election were required to have been made by the interim committee
- c) The 1st Respondent and/or certain other Respondents have exceeded their powers in approving nominations of clubs which are not eligible to vote
- d) The 1st Respondent and/or other relevant Respondents have exceeded their powers in considering the votes of clubs which are not eligible to vote
- e) The 1st Respondent and/or other relevant Respondents have exceeded their powers in approving 3 nominations to the Executive Council from a member club
- f) The 1st Respondent and/or other relevant Respondents failed to consider the nominees that ought to have been disqualified from being elected as per regulation 15 of Gazette Extra Ordinary 1793/3 dated 15th January 2013
- g) The 1st Respondent and/or other relevant Respondents disregarded the requirement for members of the interim committee to stand barred from contesting for any post in the Association

Out of the several issues raised before this court as referred to above, the main issue this court will have to consider in this application is whether the 1st Respondent and/or any other Respondents acted in excess of their powers vested on them under the said Sports Law and the Regulation made there under, when deciding to conduct the elections for the Sri Lanka Automobile Sports as evinced in document produced marked P-5. The other issues raised before this court by the Petitioner are issues

arisen subsequently as a result of the said decision of the 1st Respondent to conduct the elections for Sri Lanka Automobile Sports and therefore the said issues will only refers to the subsequent conduct of the 1st and or other relevant Respondents.

However as against the said position taken up by the Petitioner and some of the Respondents who supported the Petitioner, the 1st to 4th Respondents and the counsel representing the 5th-13th, 18th-20th, 23rd -30th and 35th Respondents mainly argued that the said decision of the 1st Respondent as evinced in P-5 and the subsequent conduct/decisions of the 1st and/or other relevant Respondents are not illegal and taken within the powers vested on them.

The said Respondents further argued before us that the Petitioner is not entitled to any relief from this court due to his conduct where he has acquiescence in the conduct of the 1st to 4th Respondents without challenging the decision, taking part in the said elections.

This court will now proceed to consider the legality of the decision which is evinced from the document produced marked P-5.

As admitted by all the parties, at the time P-5 was sent by the 1st Respondent an interim committee consist of 20th, 31st -34th Respondents appointed by the 4th Respondent was continuing with the functions of the Sri Lanka Automobile Sports.

Section 33 of the Sports Law 25 of 1973 which reads thus,

“The Minister may make interim arrangements for continuing the functions of a National Association of Sports under suspension or whose registration has been refused or cancelled.”

Regulation 55 of the Sports Regulation published in Government Gazette 1793/3 dated 15.01.2013 made under Section 41 of the said Sports Law deals with the powers of the interim committee as follows;

- 55 (1) -Upon interim arrangements being made by the Minister in terms of section 33 of the Law, any person or persons entrusted with the task of continuing the functions of a National Association of Sports, which Association is under suspension or whose registration has been refused or cancelled shall manage all movable or immovable property which is owned by or in the lawful possession of such National Association, as trustees of such National Association and shall take steps to manage and control such movable and immovable property to the office bearers of the National Association of Sports. In this respect taking over and handing over of such movable or immovable property which is owned by, or in the lawful possession of, such National Association should properly documented and recorded while a copy of the same should be submitted to the Director- General.
- (2) - It shall be duty of the persons entrusted with continuing of such National Association to conduct their functions diligently and to manage and control the property entrusted to them diligently.
- (3) - The person or persons appointed under any interim arrangements in terms of section 33 of the Law for continuing the functions of a National Association of Sports under suspension or whose registration has been refused or canceled, **shall enjoy all powers, rights and privileges as those enjoyed by the National Association of Sports**, whose registration has been suspended, canceled or refused including inter alia the rights to enter into any contracts, agreements, operate bank accounts and the said person or persons **shall be fully empowered to continue all the affairs of the National Association of Sports** whose registration has been suspended, canceled or refused and shall enter into new arrangements or projects as the said person or persons may deem fit for continuing the functions of the National Association of Sports whose registration has been suspended, canceled or refused.(emphasis added).

As observed by this court, under the provisions of the Regulation 55 (3) of the said regulation the interim committee so appointed shall be fully empowered to continue all the affairs of the National

Association and therefore this court has no reason to reject the argument raised by the Petitioner as well as the 31st, 32nd and 33rd Respondents that the interim committee is empowered to hold an Annual General Meeting in order to elect the office bearers to the executive committee of the National Association.

At the same time this court cannot undermine the powers vested on the Minister under the said Sports Law and the Regulations made there under.

As observed by this court the Minister has amended the Regulation made under section 41 of the Sports Law No 25 of 1973 by the insertion immediately after the regulation 54 (2) of the following new regulation which reads as 54 (3) of the said regulation.

54 (3) "Notwithstanding anything in any of the proceeding regulations the Minister may direct the secretary, Additional Secretary or Director General of Sport of the Ministry of Sports to convene and conduct for such purpose and in such manner as may be determined by the Minister, Special General Meeting, General Meeting or Committee Meeting of any National Association. Any such meeting so convened and conducted shall be deemed to be duly constituted meeting of the National Association."

The said Regulation 54 (3) has clearly empowered the Minister (may) to direct the Secretary, Additional Secretary or Director General Sports to convene and conduct, Special General Meeting, General Meeting or Committee Meeting as may be determined by the Minister.

Therefore it is very much clear from the regulations referred to above, that either the interim committee appointed by the Minister under section 33 of the Sports Law or Secretary, Additional Secretary or the Director General Sports as directed by the Minister under Regulation 54 (3) is empowered to conduct a meeting to elect new office bearers.

As observed by this Court the Hon. Minister has exercised the powers vested on him under section 54 (3) of the Regulations of National Sports Association in respect of the,

1. Sri Lanka Gymnastics Association
2. Sri Lanka Shooting Federation
3. Sri Lanka Body Building Federation
4. Cycling federation of Sri Lanka

and authorized the 1st Respondent to convene and conduct meetings in order to elect new office bearers.

However as submitted by the counsel for the Petitioner, document marked P-5 which is the decision of the 1st Respondent to conduct the meeting to elect the new office bearers on 13.08.2014 had reference to the Government Gazette 1831/2 dated 07.10.2013 under which the 1st Respondent is said to be empowered to conduct the said election. As observed by this court earlier, the said Gazette has only empower the 1st Respondent to conduct elections for the Four Associations I have referred to above and therefore, if the 1st Respondent claims that she acted on the powers vested on her by the said Gazette, it is understood that she had exceeded her power by doing so, since she was only empowered by the said Gazette to convene and conduct elections in respect of the four associations referred to above.

However when the statement of objection of the 1st Respondent was tendered before this court, the 1st Respondent had attached a letter dated 25.06.2014 written by the 4th Respondent Minister directing the 1st Respondent to conduct the elections of office bearers for Sri Lanka Automobile Sports.

The Learned State Counsel who represented 1st to 4th Respondents while submitting the said letter marked 1R4 submitted that even though the Minister (4th Respondent) had decided to call for an election of office bearers for Sri Lanka Automobile Sports, on account of some administrative laps this decision was not conveyed to the 1st Respondent in writing until 25.06.2014.

However this court is mindful of the fact that the same minister had issued a Gazette Notifications when he decided to exercise the powers vested on him under Regulation 54 (3) with regard to

Four Associations in October 2013 but decided to direct the same Director General by sending a letter several days after the said Director General communicating with the parties concerned.

In this regard the Learned Senior Counsel for the 5th -13th , 18th-20th, 23rd-30th and 35th Respondents argued that the direction made by the Minister to the Director General of Sports does not need to be Gazetted nor is there any provision expressly requiring that such direction be in writing.

The argument by the said Respondents before this court was that the 4th Respondent by sending 1R4 had clearly ratified the act of the 1st Respondent.

In support of this position the Respondent relied on the observations of Wood Renton CJ in *Sinnathamby V. Johnpulle 18 NLR 273* to the effect;

“There is no doubt that a principal can ratify the unauthorized act of an agent only when he is fully aware of its nature. Such knowledge may be proved either by direct evidence of its existence or by showing that it is a necessary inference in the circumstances of a case taken as a whole.”

However when considering the existence of the document produced marked 1R4 this court would prefer to analyze the circumstances under which the 1st Respondent had acted upon when conducting the elections.

As observed by this court when the 1st Respondent wrote P-5, he did not refer to any specific directive he received from the Minister but referred to the Gazette Notification No. 1831/2 dated 07.10.2013 under which he was empowered by the Minister to hold the elections.

As identified by this court the said Gazette Notification has empowered the 1st Respondent to hold elections in 4 other associations but not Sri Lanka Automobile Sports.

The subsequent conduct of the 4th Respondent becomes more suspicious when he decided to send a letter directing the 1st Respondent to dissolve the interim committee and to hold an election.

If the 1st Respondent had genuinely acted upon the said directive he received from the Minister the 1st step he should have taken was to dissolve the interim committee but, instead, the 1st Respondent continue to have discussions with the members of the interim committee with regard to issues pertaining to the conducting of elections. This is evident from the document produced marked A-4 by the 31st -33rd Respondents along with their statement of objection. During the arguments before this court it was revealed that the interim committee was functioning until the date on which the elections were held, i.e. 27.08.2014.

Learned Counsel for the Petitioner and the Counsel for the 31st -33rd Respondents had challenged the genuineness of the document 1R4 and argued that it was an introduction and not a genuine document.

When considering the circumstances under which the 1st Respondent had acted when conducting the said election, this court has no reason to reject the said argument, since the conduct of the 1st Respondent does not support that he was acting on the directives received by the 4th Respondent through 1R4.

However the Learned State Counsel explained the delay in sending 1R4 as only an “administrative laps” and submitted that “the Petitioner should not be fussed about the timing of the Minister’s letter to the Director General since the Director General must act pursuant to the directions of the Minister.”

This court has no reason to reject the said argument raised by the Learned Counsel but what is important to consider at this stage is that, at the time P-5 was issued by the 1st Respondent, whether there was in fact a directive made by the 4th Respondent under section 54 (3) of the regulations or not. This court cannot agree with the Learned State Counsel and the counsel for the 5th -13th, 18th -20th, 23rd -30th and 35th Respondents that the so called ratification had endorsed the acts committed by the 1st Respondent. Therefore it is correct to say that the 1st Respondent when issued the document produced marked P-5, had acted in excess of his power.

Wade and Forsyth had observed the act committed by Public Authorities in excess of their powers as follows,

“Judicial review is thus a fundamental mechanism for keeping public authorities within due bounds and for upholding the rule of law. Instead of substituting its own decision for that of some other body, as happens when on appeal, the court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not. If the Home Secretary revokes a television license unlawfully, the court may simply declare that the revocation is null and void.” Should the case be one involving breach of duty rather than excess of power, the question will be whether the public authority should be ordered to make good a default. Refusal to issue a television license to someone entitled to have one would be remedied by an order of the court requiring the issue of the license. If administrative action is an excess of power (*ultra vires*), the court has only to quash it or declare it unlawful (these are in effect the same thing) and then no one need pay any attention to it. The minister or tribunal or other authority has in law nothing, and must make a fresh decision.”

In the case of *Sirisena and Others Vs, H.S.R.B. Kobbekaduwa Minister of Agriculture and Lands* 80 *NLR 1* Perera J held,

“If the repository of a power exceeds its authority or if a power is exercised without authority, such purported exercise of power may be pronounced invalid”

During the arguments before this court, the Learned State Counsel and the Senior Counsel for 5th -13th, 18th-20th, 23rd-30th and 35th Respondents argued that the Petitioner is not entitling for any relief from this court due to his own conduct, to wit. he has acquiesced in the conduct of the 1st Respondent without challenging the legality of the same.

Whilst referring to the decision of Sharawananda J (as he was then) in *Nagalingam V. De Mel* 78 NLR 231 the Learned Counsel argued that Acquiescence with the conduct of a public officer precludes a challenge of that action.

However when considering the facts of the case in hand we see no relevance to the said decision since the material available in the present case clearly establishes that the 1st Respondent had acted in excess of his powers when he decided to conduct the election at Sri Lanka Automobile Sports as evinced in document marked P-5. Therefore we are of the view that the conduct of the Petitioner by taking part in the election without challenging the same will not preclude him from challenging the decision of the 1st Respondent to hold the election on the ground of the acquiescence since the decision to hold the election by the 1st Respondent itself is taken in excess of the powers of the 1st Respondent as already observed by this court. Under these circumstances this court cannot agree with the said argument raised by the Respondents.

For the afore said reasons this court concludes that the purported decision by the 1st Respondent to conduct elections of the Executive Council of the Sri Lanka Automobile Sports is made *ultra vires* and therefore we decide to quash the said decision as evinced in P-5 by issuing a mandate in the nature of *Writ of Certiorari* as prayed in paragraph (d) of the prayer to the Petition.

Since the decision to hold the election was made *ultra vires* and the Executive Council so elected on 27.08.2014 was elected during an election held on a decision already concluded as a decision declared *ultra vires*, this court further decides to issues a mandate in the nature of *Writ of Prohibition* as prayed in paragraph (e) of the prayer to the Petition preventing the 5th to 30th Respondents from holding office as office bearers of the Sri Lanka Automobile Sports as elected from the Elections held on 27.08.2014.

As observed by this court the Minister is empowered under section 33 of the Sports Law No. 25 of 1973 and the regulation made there under to appoint an interim committee to continue with the functions of a National Association and also empowered under regulation 54 (3) of the regulation made

under Section 41 of the said Sports Law to direct the Secretary, Additional Secretary or the Director General Sports to convene and conduct Special General Meeting, General Meeting or Committee Meeting of the National Association this court is not inclined to issue mandates in the nature of *Writ of Mandamus* as prayed in paragraphs (f) and (g) of the prayer to the Petition.

Writ of Certiorari and *Prohibition* as prayed in paragraphs (d) and (e) are granted.

Application is partly allowed.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala J

I agree,

JUDGE OF THE COURT OF APPEAL