

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALISTIC
REPUBLIC OF SRI LANKA

CA Writ No. 341/2013

Gammedi Liyanage Don Vijaya,
Karametiya,
Nakulugamuwa.

Petitioner

Vs.

The Chairman,
Sri Lanka Bureau of Foreign Employment,
No. 234, Densil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.

The Sri Lanka Bureau of Foreign Employment,
No. 234, Densil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.

Meegahapota Arachchige Niluka Chandima,
No.1S8, Bedigama, Witharandeniya,
Weeraketiya.

Nayomi Sandamali Wimalagunaratna,
" Thilak Grama Niladari House"
"Sandamali", Hakuruwela, Weeraketiya.

Respondents

C.A. (Writ) Application No:341/2013

BEFORE : A.H.M.D. NAWAZ, J. and
P. PADMAN SURASENA, J.

COUNSEL : L. Amerasinghe with N. Malkumara for the
Petitioner

Niel Unamboowe ASG, PC with Chaya Sri
Nammuni SC for the 1st and 2nd Respondents

ARGUED AND
DECIDED ON : 10.01.2017

A.H.M.D. NAWAZ, J.

This is an application for a mandate in the nature of a writ of Mandamus compelling the 1st and 2nd respondents namely, The Chairman, Sri Lanka Bureau of Foreign Employment and the Sri Lanka Bureau of Foreign Employment to commence legal proceedings against the 3rd and 4th respondents – two private parties against whom an allegation has been made to the effect that they caused a certain sum of money to be deposited into their accounts for the purpose of procuring an employment for the son of the petitioner. The petitioner has made a complaint against the 3rd and 4th respondents to the Sri Lanka Bureau of Foreign Employment on 24.11.2011. In response to this complaint the 2nd respondent Bureau had noticed the parties to be present at the

Bureau with documents for an inquiry on 19.12.2011. Thereafter, the Bureau has summoned both parties to be present on 09.02.2012. There is also another notice sent to both parties to be present at an inquiry to be held on 12.03.2012. This is evidenced by 1R2(a) – a document which is attested to be from the personal custody of the 2nd respondent Bureau. It has to be noted that the petitioner himself has attached two documents namely P14 and P15 supporting the fact of being summoned by the Sri Lanka Bureau of Foreign Employment for an inquiry. All these facts indicate that the 2nd respondent - Sri Lanka Bureau of Foreign Employment has taken steps to hold an inquiry in respect of this complaint made on 24.11.2011 but it is observed from the affidavit made on behalf of the 2nd respondent that neither the petitioner nor the 3rd and 4th respondents participated at the inquiry which was launched by the Sri Lanka Bureau of Foreign Employment. In the circumstances, this Court takes the view that the 2nd respondent cannot be said to have refused to perform the duty of causing an inquiry to be held in respect of a complaint, which is mandated under Section 44 of the Sri Lanka Bureau of Foreign Employment. It is only an inquiry that can conclusively establish whether the 2nd respondent Bureau should in the end initiate legal proceedings. The application is for a mandate compelling legal proceedings to be initiated. If preliminary steps necessary for legal proceedings to be initiated have not come about, it has to be stated that it is due to the absence of the petitioner at the

inquiry that was initiated by the 2nd respondent Bureau. In other words a party who complains of a refusal to perform a public duty/statutory duty on the part of a respondent cannot seek a writ of mandamus when that party himself/herself has disabled the respondent from performing a public duty. In the circumstances, this Court sees no merit in this application and this application for a writ of Mandamus is thus refused. The other reliefs sought in the petition cannot be granted for the same reasons. The application for judicial review is thus refused.

JUDGE OF THE COURT OF APPEAL

P. PADMAN SURASENA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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