

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

In the matter of an application for mandate in the
nature of a writ of Prohibition writ of Certiorari
and a writ of Mandamus under and in terms of
Article 140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka

Court of Appeal case no. CA 213/2017

Rev. Battaramille Seelarathana,
No. 425/A, Robert Gunawardana Mawatha,
Battaramulla.

Petitioner

Vs.

1. Ceylon Electricity Board,
P.O. Box 540,
N. 50,
Sir Chittamapalam A. Gardiner Mawatha
Colombo 02
And 33 others

Respondents

Before : L.T.B. Dehideniya J. (P/CA)

Counsel : Pradeep Kumarasinghe for the Petitioner.
: Rumesh de Silva PC with Harith de Mel and S.V. Niles
instructed by D. Vidanapathirana for the 30th Respondent.

Supported on : 17.07.2017

Decided on : 19.07.2017

L.T.B. Dehideniya J. (P/CA)

The learned President's Counsel for the 30th Respondent raised a preliminary objection that the application cannot be maintained on the basis that the prayers to the petition are not maintainable. The learned Counsel for the Petitioner submitted that he is not proceeding with the prayers (h), (i) and (j) where the Petitioner was seeking for injunctions and enjoining order, but he will be proceeding with the other prayers. Therefore I need not to consider the maintainability of the said prayers (h), (i) and (j). I will consider the maintainability of the rest of the prayers.

In prayers (d) and (e) the Petitioner is seeking for a mandate in the nature of writ of *mandamus* to prevent the Respondents from taking further steps. A writ of *mandamus* cannot be issued to prevent a person from doing things; it is to compel a person in authority to perform his duty that he is legally bound to do. Therefore the Petitioner cannot maintain the said prayers (d) and (e).

Administrative Law by Wade and Forsyth Ninth Edition at page at page 615 it says that;

The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities of all kinds. Like the other prerogative remedies, it is normally granted on the application of a private litigant, though it may equally be used by one public authority against another. The commonest employment of mandamus is as a weapon

in the hands of the ordinary citizen, when a public authority fails to do its duty by him. Certiorari and prohibition deal with wrongful action, mandamus deals with wrongful inaction.

Prayer (f) is for a mandate in the nature of a writ of *mandamus* directing the 3rd to 7th Respondents to perform its duties with regard to the Procurement Process in this action as stipulated in Articles 156C(1), 156 C(2) (a), (b), (c), (d) and (e) of the Constitution. This is a vague application. The duty that he is directed to perform must be clearly indicated because the writ of mandamus is always followed with a threat of punishing the person for not obeying the Court order if he fails to perform the duty that he is directed to perform. Therefore the Court cannot direct a person to “perform its duties with regard to the Procurement Process” unless the duty is correctly specified.

Prayer (g) of the petition is for a mandate in the nature of a writ of *prohibition* to prevent the Respondents from doing certain things until “a Court order is entered by this Court relating to the Procurement Process”. Courts do not issue writs until the conclusion of cases. Therefore this prayer is also not maintainable.

The prayer (b) is for a mandate in the nature of a writ of *certiorari* to quash the appointment 12th to 16th Respondents and prayer (c) is to quash the appointment of 17th to 25th Respondents. Unless the appointing authority is given an opportunity to present his case, the Court cannot make an order to quash the appointment. The appointing authority for the 12th to 16th Respondent is the Cabinet of Ministers. They are the members of the “Standing Cabinet Appointed Procurement Committee”. The name of the Committee itself shows that they were appointed by the Cabinet of Ministers. The petitioner has not made the appointing authority a party. 17th to 25th Respondents are members of the “Technical Evaluation

Committee". According to paragraph 2.8.2 of Procurement Guidelines marked P4; it is the NPA that shall appoint the TEC for the Cabinet Appointed Procurement Committee. But the paragraph 2.8.3 permits the Secretary to the Line Ministry to appoint TEC for the Ministry Procurement Committee. As per P8 the 17th to 25th Respondents were appointed by the Secretary to Finance Ministry. The secretary to the Finance Ministry is a party to the application. Therefore, though the maintainability of the prayer (b) is in doubt, on the face of it, the prayer (c) of the petition can be maintained.

Under these circumstances, I hold that this case cannot be dismissed in limine. I fix the matter for support for notice.

President, Court of Appeal