

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

CA Writ No. 651/2011

Sri Lanka Medical Council
No.31, Norris Canal Road,
Colombo 10.

Petitioner

Vs.

Secretary
Ministry of Finance and Planning and
Economic Development,
1st Floor,
The Secretarial,
Colombo 01.

And 04 others

Secretary
Ministry of Healthcare and Nutrition,
Suwasiripaya, Colombo 10.

Respondents

Case No.: CA 651/2011 Writ

Before : **A.H.M.D. Nawaz, J.**
 P. Padman Surasena, J.

Counsel : Chathura Galhena for the Petitioner.
 Arjuna Obeysekara, SDSG for the AG.

Date : 16.11.2016

A.H.M.D. Nawaz, J.

Counsel for the Petitioner Mr. Chathura Galhena and Mr.Arjuna Obeysekara, SDSG have made their submissions in respect of this matter. By the petition dated 22.11.2011, the Petitioner – Sri Lanka Medical Council seeks several orders from this Court among which are a writ of certiorari and a writ of prohibition in respect of two circulars that have been marked respectively as **P10** and **P10B**. Whilst the circular marked P10 categorizes the Petitioner as a public enterprise, P10B nominates certain ages for retirement in respect of employees in the public enterprise so nominated. However, this Court observes that the person who has sworn an affidavit to prosecute this application for the aforesaid writs has stated in his affidavit dated

22.11.2011 that he has been duly authorized by the Petitioner to affirm to the several matters he has sworn in his affidavit. It is to be noted that the Petitioner – Sri Lanka Medical Council is a body corporate which has perpetual succession and common seal and several powers and duties have been imposed on the said Council by the Medical Ordinance of 26.10.2007 which has been amended from time to time. The deponent on behalf of the said corporate body, though he claims authorization from the Council, has not provided any evidence of authority on behalf of the Petitioner. In the case of a corporate entity seeking mandatory orders and quashing orders in the nature of certiorari and prohibition, it has to act through agents and such agents have to provide before this Court a proper authorization for purposes of adjudication into the merits of the application. In other words the Attorney-General has raised this question in the argument before us and it has to be noted that though this Court has taken an expansionist attitude in regard to *locus standi*, there has to be proper delegation of authority for the chairman of a legal entity to act on behalf of such entity. It has been submitted before us that the Council (Petitioner) comprises 24 members and there is no motion or a joint affidavit on their behalf authorizing the chairman to plead for prerogative orders. This Court doesn't need to emphasize that an ultra vires act can always be challenged in its proper

jurisdiction of this Court but there has to be a proper authorization of a deponent.

Be that as it may, this Court is of the view that this application as presently constituted has to be dismissed on the basis of this preliminary objection. We proceed to dismiss the petition in view of the infirmity as pointed out above.

JUDGE OF THE COURT OF APPEAL

P. Padman Surasena, J.

I agree

JUDGE OF THE COURT OF APPEAL

Nr/-