

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

In the matter of an Applications for mandates in the nature of Writs of *Certiorari* and *Mandamus* in term of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Case No: CA (Writ) 0300/2020**

1. Panamure Maithree Murthi Thero,  
Sri Sudarshanaramaya Vihara,  
Palamugama, Anuradhapura.
2. Kadawalawewe Suseela Thero,  
Siri Maha Bodhi Udakukkhepa Seema  
Malakaya,  
Warathenna, Halloluwa,  
Kandy.
3. Toranegama Dhammaruchi Thero,  
Sri Sudharmarama  
Rajamaha Viharaya,  
Batagalla, Pujapitiya.
4. Haddewe Nalaka Thero  
Sri Sudarshanaramaya Vihara,  
Palamugama,  
Anuradhapura.
5. Divanawatte Suseela Thero  
Sri Sudharmarama Rajamaha Viharaya,  
Batagalla, Pujapitiya.
6. Ariyagama Panggnasara Thero  
Denispalaruka, Sri Maha Bodhi  
Gallena, Rusigama, Ariyagama.

7. Molagoda Dhammananda Thero  
Sri Wardhanarama Viharaya,  
Bulankulama.

8. Galkiriyagama Siri Seewali Thero  
Nawarathnagoda Sri Jinaraj Maha  
Viharaya, Matale.

**PETITIONERS**

**Vs.**

1. Rev. Niyangoda Samiddhi Mangala Thero,  
Mahanayaka,  
Udarata Amrapura Sasana Jothika  
Parshawaya,  
Sri Bodhimalu Viharaya,  
Srimath Kudarawatta Mawatha  
Dodamwala,  
Kandy.

2. Rev. Madipola Dhammika Thero  
Lekakhadikari (Registra)  
Udarata Amrapura Sasana Jothika  
Parshawaya  
Sri Sugatha Maha Viharaya,  
Ihalagama, Madawela,  
Kandy.

3. Sunanda Kariyapperuma  
Commissioner of Buddhist Affairs  
under the Buddhist Temporalities Ordinance,  
No. 19 of 1931 (as amended by Act, No. 42  
of 1981)  
Department of Buddhist Affairs,  
No. 135, Dharmapala Mawatha,  
Colombo 7.

**RESPONDENTS**

**Before: M. T. Mohammed Laffar, J.**

**S. U. B. Karalliyadde, J.**

**Counsel:**

Lakshman Perera P.C. with Upendra Walgampaya and Ms. L. Fernando for the Petitioners.

Thishya Weragoda with Ms. Thamali Rajapaksha and Ms. Ruchini Jayasinghe instructed by Thamali Dinushi Perera for 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

Suranga Wimalasena, DSG for the 3<sup>rd</sup> Respondent.

**Written submissions tendered on:**

06.12.2020 by the Petitioners.

08.12.2022 by 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

**Argued on:** 27.10.2022

**Decided on:** 29.11.2023

**S.U.B. Karalliyadde, J.**

The 1<sup>st</sup> to 8<sup>th</sup> Petitioners are Upasampada Bhikkus of the Udarata Amarapura Sasana Jothika Parshawaya allegedly belong to the Amarapura Nikaya. They obtained Higher Ordination (*Upasampada*) on 26<sup>th</sup> June 2020 at an Upasampada ceremony held according to the Buddhist Rules and Rituals and thereafter, they forwarded the duplicates of the duly filed Upasampada Declarations in the prescribed “form A” of the Schedule to the Buddhist Temporalities Ordinance, No.19 of 1931 as amended by the Act, No. 34 of 2013 (the Ordinance) marked as P-1 to P-8 to the Commissioner-General of Buddhist Affairs (the Commissioner-General), the 3<sup>rd</sup> Respondent, in terms of Section 41(2)(a) and 41(2)(b) of the Ordinance. The 3<sup>rd</sup> Respondent decided not to

register the Upasampada Declarations of the 1<sup>st</sup> to 8<sup>th</sup> Respondents for the reason that the Udarata Amarapura Sasana Jothika Parshawaya has not been recognised as a Chapter (Prashawaya) by the Amarapura Maha Nikaya and by letters dated 12.08.2020 marked as P-9 and P-9(a) to P-9(g) that decision has been conveyed to the Registrar (Lekakadhikari) of the Udarata Amarapura Sasana Jothika Parshawaya (the 2<sup>nd</sup> Respondent). Being aggrieved by the said decision of the 3<sup>rd</sup> Respondent the Petitioners in this Writ Application seek the following substantive reliefs;

(b) Issue a mandate in the nature of the Writ of Certiorari quashing the purported decisions of the 3<sup>rd</sup> Respondent contained in the documents marked P-9 and P-9(a) to P-9(g).

(c) Issue a mandate in the nature of a Writ of Mandamus compelling the 3<sup>rd</sup> Respondent to register the names of the 1<sup>st</sup> to 8<sup>th</sup> Petitioners as Upasampada Bhikkus under and in terms of the Ordinance.

The position of the learned President's Counsel appearing for the Petitioners is that in terms of Section 41(3) of the Ordinance, the 3<sup>rd</sup> Respondent is legally bound to register the names of the Petitioners in the Register for the Registration of Upasampada Bhikkus and send one copy of the duplicates of the same to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for due registration. The learned President's Counsel argued that the 3<sup>rd</sup> Respondent is estopped in law from refusing to register the Upasampada Declarations of the Petitioners as he is not empowered by the provisions of the Ordinance to recognise and/or refuse to recognise any Chapter.

The argument of the learned DSG appearing for the 3<sup>rd</sup> Respondent is that the Ordinance only recognise the Nikaya and not Chapters (Parshawaya) and there is no Parshawaya as Udarata Amarapura Sasana Jothika Parshawaya under the Amarapura Maha Nikaya recognised by the Uththarithara Mahanayaka Thero of the Amarapura Maha Nikaya according to the letter dated 22.06.2020 sent by the acting Mahanayaka Thero of the Udaratra Amarapura Chapter to the 3<sup>rd</sup> Respondent (marked as R1). Therefore, the learned DSG appearing for the 3<sup>rd</sup> Respondent argues that the refusal to register the Petitioners as Upasampada Bhikkus were done in terms of the law.

The question that arises to decide in this Writ Application is, whether the 3<sup>rd</sup> Respondent has the power to refuse the registration of Petitioners as Upasampada Bhikkus in terms of Section 41(3) of the Ordinance. The Section 41(3) is read as follows;

*(3) The Commissioner-General of Buddhist Affairs **shall** on receiving the said forms in duplicate retain one copy of each for his own use and **forward** the other to the Mahanayaka Thera or Nayaka Thera of the nikaya **mentioned therein**, and it **shall** be the duty of both the Commissioner-General of Buddhist Affairs and the said Mahanayaka Thera or Nayaka Thera to file their respective copies of such forms and make registers thereof. (Emphasis added)*

In terms of Section 41(3) upon receipt of the forms of Upasampada Declarations it “*shall*” be the duty of the Commissioner-General to retain one copy for his use and

forward the other copy to the Mahanayaka or Nayaka Thero of the Nikaya mentioned in the Form and make a register thereof.

The word “**Shall**” is an imperative command, usually indicating that certain actions are mandatory, and not permissive. *Black's Law Dictionary* 8<sup>th</sup> Edition at page 1407 defines the word “shall” as “*has a duty to; more broadly is required to*”.

In *Maxwell on The Interpretation of Statutes*, 12<sup>th</sup> Edition at page 284, citing *R Vs. Board of Trade, ex p. St. Martins Preserving Co. Ltd*<sup>1</sup>, interpreting the word “shall” as used in the United Kingdom Companies Act states that “*By section 164 of the Companies Act 1948, the Board of Trade “may” appoint an inspector to investigate the affairs of a company, while section 165 provides that the Board “shall appoint one or more competent inspectors” in the circumstances there defined. It was held, contrasting the permissive language of section 164, that where the specific circumstances occurred, the Board was bound to appoint an inspector under section 165.*”

In the case of *Mohamed Ali Sameed Smail Vs. Attorney General*<sup>2</sup>, S. Thuraiaraja PC J. has held that “*if in law the word shall is used it means that it must be complied with and there is no discretion available to the person who is complying with the said law*”

In terms of Section 41(3) of the Ordinance the Commissioner-General upon receiving the Upasampada form shall retain one copy and forward the other to the Mahanayaka Thero or Nayaka Thero mentioned herein and it shall be the duty of the Commissioner-

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<sup>1</sup> [1965] 1 Q.B. 603.

<sup>2</sup> Case No. CA/160/2015

General and the said Mahanayaka Thero or Nayaka Thero to file their respective copies of such forms and make registers. Therefore, it should be given a mandatory/compulsory meaning to Section 41(3) where, the Commissioner-General is compelled to discharge without having the discretion to do otherwise he cannot question the details mentioned in the Upasampada Declarations marked as P-1 to P-8.

Section 41(5) of the Ordinance has empowered Mahanayaka Thero or Nayake Thero of a Nikaya to modify the entries by effecting corrections, additions or alterations in the registries maintained by him in respect of Upasampada Bhikkus and Samaneras to keep them updated. Upon communicating such modifications by the Mahanayaka Thero or Nayake Thero, the Commissioner-General shall similarly modify the registers he is required to keep by Section 41.

In the case of *Maha Nayaka Thero of Malwatte Viharaya Vs. Registrar-General*<sup>3</sup>, the Mahanayaka Thero of the Malwatte Chapter requested the Registrar-General to make the necessary modification under Section 41(5) of the Buddhist Temporalities Ordinance regarding the removal of the name of one Thero from his register. The Registrar-General refused to modify the register on the ground that the Ordinance does not contemplate expulsion from priesthood and therefore, the Mahanayaka Thero filed a Writ Application seeking a Writ of Mandamus against the decision of the Registrar-General. It was held in that case that, the position taken up by the Registrar-General has

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<sup>3</sup> 39 NLR 186.

no legal or logical justification and he is performing a ministerial act when he is acting under Section 41(5) of the Ordinance. Therefore, he has no discretion and he cannot question the validity of the decision of the Mahanayaka or the Sangha Sabha and he is under a legal duty under Section 41(5) to remove the name of the Buddhist Priest from the register on being requested by the Mahanayaka on the ground that the Priest has been expelled from the order or to make the necessary alterations.

Further, in that case, Soertsz J. observed that;

*“I am therefore of the opinion that if the matter stood in this position, and no other considerations arose, a clear case has been made out for the issue of a writ directing the Registrar-General to modify his register. It is a duty the statute casts upon him in imperative terms. **It gives him no discretion and he is usurping functions he does not possess** when he acts in the manner in which he acted in this case.”* (Emphasis added)

In Jain and Jain, *The Principles of Administrative Law* (1988) 4<sup>th</sup> Edition at page 325 it is stated that;

*"Functions dischargeable by the administration may either be ministerial or discretionary. A ministerial function is one where the relevant law prescribes the duty to be performed by the concerned authority in certain and specific terms leaving nothing to the discretion or judgment of the authority. It does not involve investigation into disputed facts or making of choices. The authority concerned acts in strict*



*obedience to the law which imposes on it a simple and definite duty in respect of which it has no choice."*

It is the view of this Court that, the Commissioner-General is performing a ministerial act when he is acting under Section 41(3) of the Ordinance as well and therefore, has no authority to refuse to register the Upasampada Declarations of the 1<sup>st</sup> – 8<sup>th</sup> Petitioners.

Under the above-stated circumstances, I hold that the decision of the 3<sup>rd</sup> Respondent not to register the Upasampada Declarations of the 1<sup>st</sup> to 8<sup>th</sup> Respondents is illegal, *ultra vires* and should be quashed. Therefore, I issue Writs as prayed for in prayers b and c in the Petition. The 3<sup>rd</sup> Respondent should pay Rs. 5000/- each to the 1<sup>st</sup> – 8<sup>th</sup> Petitioners as costs of this Application.

**JUDGE OF THE COURT OF APPEAL**

**M.T. MOHAMMED LAFFAR, J.**  
**I agree.**

**JUDGE OF THE COURT OF APPEAL**