

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

*In the matter of an Application for Mandates in the
nature of Writs of Certiorari, Mandamus and
Prohibition under and in terms of Article 140 of the
Constitution of the Democratic Socialist Republic
of Sri Lanka.*

1. K. T. Kurusamy, alias,

Kalan Gandhi Thevar Kurusamy,
No. 164, St. Andrew's Road,
Modara,
Colombo 15.

2. Palaniyandi Pillai Pushpanathan

No. 9-3/3, Moor Street,
Colombo 06.

**CA/ Writ Application No:
241/25**

PETITIONERS

Vs.

Piyumi Artigala

Returning Officer- Colombo Municipal
Council,
Narahenpita Road,
Colombo 05.

& others

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J (President C/A)- Acting.**
K. P. FERNANDO, J.

Counsel: Faiszer Musthapha, P. C. with Shaheeda Barrie, Tharaka
Nanayakkara, Ridmi Beneragama and Nimantha Chandrasena,
Instructed by Sajeewa Kaluarachchi for the Petitioners.

Sehan Soyza, SSC for the State.

Supported on: 03.04.2025

Decided on: 04.04.2025

MOHAMMED LAFFAR, J. (President of The Court of Appeal- Acting)

The Petitioner, the team leader of an independent group, seeks, *inter alia*, a writ of Certiorari to quash the decision of the 6th Respondent (the Returning Officer of Vavuniya) rejecting the nomination papers submitted by the Petitioner for the Vavuniya North Pradeshiya Sabha elections, scheduled for 06.05.2025. Additionally, the Petitioner seeks a writ of Mandamus directing the 1st to 6th Respondents to accept the said nomination papers. We heard the learned Presidents Counsel for the Petitioner in support of this application and the learned Senior State Counsel who is appearing for the Respondents as well.

During the proceedings, the learned Senior State Counsel, after consulting the Honourable Attorney General, informed the Court that the Respondents would not be filing objections and invited the Court to make a final determination based on the submissions of both parties, treating them as final arguments.

In a nutshell, the rejection of the Petitioners' nomination papers was based on the grounds that the copies of their birth certificates, submitted to certify their youth eligibility, were not properly certified by the authorized authority responsible for issuing such documents.

Admittedly, in the instant application, the copies of the birth certificates are certified by a justice of peace and/or a notary public. The contention of the Senior State Counsel is that those documents should be certified by a District Registrar in terms of

Section 11A read with Section 57 of the Births and Deaths Registration Act No. 40 of 1975 (as amended).

Section 11A reads as follows;

“11A.

Where a registration entry is made in triplicate in accordance with provisions of this Act by the registrar of a division or by a District Registrar or by an Additional District Registrar on particulars furnished by an informant, such registrar or District Registrar or Additional District Registrar shall forthwith, free of charge, deliver or transmit by post to such informant, the third copy of that registration entry.”

Section 57 reads as follows;

“57

(1) The third copy issued under section 11 A or a certified copy of, or a certified extract from, a registration entry obtained under section 56 shall be received as prima facie evidence of the birth, death or still-birth to which that copy or extract relates if that entry purports to have been made in accordance with the provisions of this Act, and that copy or the extract purports to have been made under the hand of the Registrar-General, or an Assistant Registrar-General, or the appropriate District Registrar, or the appropriate Additional District Registrar, or under the hand of the appropriate registrar.

(2) A certified copy or a certified extract of a registration entry issued under the appropriate section of any past enactment shall be received as prima facie evidence of the birth, death or still-birth to which that copy or extract relates if that entry purports to have been made in accordance with the provisions of such enactment and that copy or extract purports to have been made under the hand of the Registrar-General, an Assistant Registrar-General, the appropriate District Registrar, or the appropriate Additional District Registrar, or under the hand of the appropriate registrar.”

The central issue for determination in this application is whether a birth certificate certified by a Justice of the Peace or a Notary Public satisfies the requirements of the Local Authorities Elections Ordinance No. 53 of 1946 (as amended), or whether such certification must strictly be performed by the District Registrar as stipulated in the Births and Deaths Registration Act.

It is pertinent to note that Section 28(4A) of the Local Authorities Elections Ordinance requires candidates to submit certified copies of birth certificates for all youth candidates. Notably, the Ordinance remains silent as to which authority is authorized to provide such certification.

Section 28(4A) of the Local Authorities Elections Ordinance reads thus;

“(4A) A certified copy of the birth Certificate of every youth whose name appears in the nomination paper or an affidavit signed by such youth, certifying his date of birth shall be attached to such nomination paper.”

The learned Senior State Counsel relied on the observation made by Sathya Hettige J and Upaly Abeyrathne J in the case of **M. G. Pawaresene Vs. Dayananda Dissanayake and others**¹ where it was observed by their Lordships that the copies of the birth certificate should be certified by the Registrar of births and deaths which reads as follows;

“I view of the statutory provisions of law above referred to it can be seen that certified copy of a birth certificate is issued only by the Registrar of births and deaths or his assistant Registrar and no other person is authorized to issue certified copies of birth certificates. A true copy of a birth certificate issued by a Justice of the Peace is not certified copy required by law”

The learned Presidents Counsel for the Petitioner relied upon the judgment of Shirani Tilakawardane J, in the case of **D. M. Jayaratne Vs. Vaas Gunawardane and others**² where her Ladyship observed that a returning officer errs in rejecting nomination papers solely because a birth certificate copy was not certified by the District Registrar, as such requirement is not mandated by law. Her Ladyship further observed that in the absence of objections raised by the other contesting parties the returning officer should not reject the application on the aforesaid ground *ex mero motu*.

Having carefully scrutinized the foregoing decisions of the Court of Appeal, it is abundantly clear that Sathya Hettige, J adopted a narrow interpretation of the certification requirements, while Shirani Tilakawardane, J favoured a more liberal interpretation of the same provisions.

¹ CA/WRT/75/2011 dated 12.05.2011

² CA/WRT/325/2002 dated 28.02.2002

This Court finds that the rejection of nomination papers on overly technical grounds has far reaching consequences. Such actions do not merely affect the individual candidates of the independent group in question, they undermine the fundamental democratic rights of the entire electorate in the constituency. The franchise is a cornerstone of representative democracy, and when nomination papers are arbitrarily rejected, the voters are effectively denied the opportunity to choose their preferred representatives.

Moreover, the rejection of valid candidacies disrupts the integrity of the democratic electoral process. When nomination papers are dismissed on frivolous or excessively rigid technicalities, the democratic process is disturbed. This not only infringes upon the rights of aspiring candidates but also disenfranchises voters who might have otherwise supported them.

In a functioning democracy, electoral laws should facilitate and not obstruct fair participation. While regulatory compliance is necessary, an overly restrictive application of certification requirements risks disenfranchising legitimate candidates and depriving voters of meaningful choice.

Having carefully considered the competing judicial interpretations, this Court finds greater merit in adopting a liberal construction of the relevant provisions.

At this juncture the attention of this Court is drawn to the gazette notification bearing no. 2360/22 dated 27.11.2023 which reads thus;

"2.1 every Justice of Peace shall

(i) be required to serve the public in relation to attestation and authentication of documents, in accordance with the following conditions

(b) shall never certify a document unless the original has been produced and examined and he is satisfied as to the identity of the person signing the document."

The Gazette Notification's provisions demonstrate clear legislative intent to authorize Justices of Peace as competent certifying officers. When read harmoniously with the Local Authorities Elections Ordinance, this confirms that Justices of peace certified birth certificates satisfy the statutory requirements for nomination purposes.

Furthermore, Section 31 of the Local Authorities Elections Ordinance provides an exhaustive list of grounds upon which nomination papers may be rejected. A careful examination of these provisions reveals that the legislature did not include the method of document certification as a permissible basis for rejection.

Section 28(8) grants the independent group leader or secretary of the registered political party the right to rectify any errors or omissions in nomination papers before the nomination period expires. This provision establishes that when any error or omission exists in the nomination papers, the Returning Officer has a duty to inform the independent group leader or secretary of the registered political party to enable correction of such error or omission.

Having carefully considered these applications, this Court observes that Returning Officers appear increasingly inclined to reject nominations on minor technicalities and frivolous grounds, an approach wholly inconsistent with legislative intent. The statutory framework governing elections was never designed to empower Returning Officers as obstructive gatekeepers, rather, their proper role is to serve as facilitators of the democratic process. It is imperative that these officials make conscious efforts to interpret electoral provisions liberally, resolve ambiguities in favor of participation. Such an approach is essential to safeguard both the fundamental right to contest elections and the correlative right of electors to choose their representatives freely.

This Court is further mindful of the fact that no candidate or registered political party raised objections before the Returning Officer regarding the authenticity of the birth certificates in question. Moreover, for the identification of the candidates in all these applications, the National Identity Card of the candidates have been tendered.

For the foregoing reasons I hold that the copies of the birth certificate certified by the Justice of Peace or the Notary Public is sufficient to accept as certified documents in terms of the provisions of the Local Authorities Elections Ordinance, and therefore the decision of the Returning Officer rejecting the nomination papers is quashed. This Court issues a Writ of Mandamus directing the 6th and 7th Respondent to accept the nomination papers submitted by the Petitioners. Accordingly, the application is allowed. No cost.

The judgement in this application is applicable and binding on all parties in the connected applications bearing nos. WRT/280, 259, 255, 260, 227, 296, 273, 230, 231,

232, 236, 257, 308, 320, 321, 323, 324, 327, 328, 331, 332, 333, 334, 335, 336, 343, 344/2025
as well.

President of the Court of Appeal (Actg)

K. P. Fernando, J

I agree.

Judge of the Court of Appeal