

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

In the matter of an application for readers in a
Nature of Writs of Certiorari and Prohibition
under and in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

CA-WRT-293/21

1. Mohamed Alavi Navaz Caffoor
No-57 Green Path
Colombo-03

2. Abdul Majeed
Mohamed Abdul Cader
No-85, Barnes Place,
Colombo-07

3. Mohamed Riyaz Mohamed Hamza
No-11, Ruhunukala Mawatha
Colombo-08

And presently of
Puisne Judge- High Court of Fiji Registrar of
the High Court of Fiji
Fiji

By his Attorney
Mohamed Uvais Mohamed Hamza

No-26/9,Sir Marcus Fernando
Mawatha, Colombo-04

4. Ahmamed Jazeem Mohamed Ariff
No- 171/7A, Baudhaloka Mawatha,
Colombo-04

5. Mohamed Hejazi Thahir No, 117, Hampden
Lane
Wellawatte, Colombo-06

6. Mohamed Iqbal Faiz Abdul Caffoor
No-31,W.A.D.Ramanayake
Mawatha, Colombo-02

7. Farzad Hussain Caffoor
No-05, Flower Road, Colombo-07

8. Mohamed Azmeth
Hussain Caffoor
No- 114B, Horton Place,
Colombo-07

9. Mohamed Thalib Hassan Caffoor
No-81 Horton Place,

Colombo 07

Also, of

No-255, Raeburn Avenue
Surbition KT5 9DF, United Kingdom

By his Attorney
Fathima Inneth Sherin Caffoor
No-10/16A, Lake Drive
Colombo-08

10. Mohamed Uvais Mohamed Hamza
No-26/9, Sir Marcus Fernando
Mawatha
Colombo-07

11. Sithy Sihara Caffoor
No-114B, Horton Place
Colombo-07

Petitioners

Vs

1. The Director
Mosque and Muslim Charitable
Trusts or Wakfs
No-180 T.B.Jayah Mawatha
Colombo-10

2. Dr.U.L.Abdul Majeed
Chairman
Wakfs Tribunal of Sri Lank No-180 T.B.Jayah
Mawatha
Colombo-10

3. A.A.M. Illiyas PC

Member

Wakfs Tribunal of Sri Lanka No-180

T.B.Jayah Mawatha

Colombo-10

4. M.C.Abdul Azeez Esq

Member

Wakfs Tribunal

No-180 T.B.Jayah Mawatha

Colombo-10

5. Dr.M.H.M.Azhar

Ghaffooriya Arabic College

Pamunuwa Road, Maharagama

6. M.F.M.Hassan Faris

Ghaffooriya Arabic College

Pamunuwa Road, Maharagama

7. M.S.M.Arshad

Ghaffooriya Arabic College

Pamunuwa Road, Maharagama

8. N.G.M.Hannan

Ghaffooriya Arabic College

Pamunuwa Road, Maharagama

9. A.H.M.Akram
Ghaffooriya Arabic College
Pamunuwa Road, Maharagama

10. M.S.A.M.Shahrin
120,Main Street, Kal-eliya

11. M.J.M.Maznavi
51/1,Baire Road, Colombo-12

12. A.C.Rishad Ahamed
11 RO, Aramya Road
Dematagoda
Colombo-09

13. M.H.M.Irshad Marikkar
590, Maraikkar Hardware
Kanumull North Madurangkuli.

14. A.S. Hibathullah
Rock Side Villa
No-51/1 Sumanagala Mawatha
Kurunagella.

15. A.R.M.Manas,
22, Western Solden Road,
Puttalam

Respondents

Before : R. Gurusinghe, J
B. Sasi Mahendran, J.
R.P. Hettiarachchi J.

Counsel: Suren Gnanaraj with Shamalie de Silva and Sandun Batagoda for the
Petitioners
P.Jayasekara, SC for the 1st Respondent
Hejaaz Hizbullah for the 5th to 15th Respondents

Written

Submissions: 16.05.2025 (by the Petitioner)
On: 22.05.2025 (by the 5th to 15th Respondents)
18.06.2025 (by the 1st Respondent)

Argued On : 10.03.2025, 18.03.2025 and 01.04.2025

Judgment On: 28.08.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Petitioners commenced these proceedings seeking the reliefs outlined in the petition dated 11 June 2021.

- I. For notice of this Application to be issued on the Respondents;
- II. For an interim order staying the proceedings in the Wakf Tribunal in Case No. WT/273/2020 until the hearing and final determination of this application;
- III. For a Declaration that the N.D.H. Abdul Ghaffoor Trust is not a Wakf and/or not a Muslim Charitable Trust as contemplated by the Muslim Mosques and Charitable Trusts or Wakfs Act No 51 of 1956 (as amended),

and/or not subject to the jurisdiction of the 1st Respondent and or the 2d to 4*" Respondents;

- IV. For a mandate in the nature of a Writ of Certiorari quashing the purported "reference" dated 19/08/2020 of the 15th Respondent marked 'X21';
- V. For a mandate in the nature of a Writ of Certiorari quashing the purported "Notice" dated 22/01/2021 and marked 'X20' issued by and or upon the direction of the 2d to 4th Respondents on the Petitioners and/or directing pursuant to the same;
- VI. For a mandate in the nature of a Writ of Prohibition, restraining/prohibiting the 1st Respondent and/or the 2nd to 4th Respondents from taking any steps in pursuance of the purported reference dated 19/08/2020 and marked 'X21' tendered by the 5th to 15th Respondents;
- VII. For a mandate in the nature of a Writ of Prohibition prohibiting and or restraining the 1st Respondent and or the 2nd to 4th Respondents from taking cognizance of and or referring to the Wakf Board and or to the Wakf Tribunal and or the 2nd to 4th Respondents, any application whatsoever made by any persons whomsoever in respect of and or relating to the Ghaffooriya Arabic College and or the N.D.H. Abdul Ghaffoor Trust.
- VIII. For a mandate in the nature of a Writ of Mandamus directing the 1st Respondent to reject and or dismiss any application received by any persons whatsoever in respect of and or relating to the Ghaffooriya Arabic College and or the N.D.H. Abdul Ghaffoor Trust and or the properties of the said N.D.H. Abdul Ghaffoor Trust;
- IX. For costs;
- X. For such other and further relief as to Your Lordships' Court may seem meet.

According to the petition, the 1st Respondent—Director of the Mosque and Muslim Charitable Trust (Wakfs)—referred a matter concerning the *N.D.H. Abdul Gafoor Trust* to the Wakfs Tribunal, implicating the Petitioners. Subsequently, the

Tribunal issued a notice, marked as 'X20', summoning the Petitioners to appear before it. As stated in document 'X20', the Director had informed the Tribunal via a letter dated 19.08.2020 that the Old Boys' Association of the relevant school had lodged a complaint. They alleged that the Petitioners, acting as trustees, had withheld financial assistance intended for the management of the Arabic College and Hostel. Furthermore, the Association requested the formation of a new management committee to oversee the school and hostel. In response, the Wakfs Tribunal directed the Petitioners to appear before it on 13.02.2021.

In response to the said reference, the Petitioners have invoked the jurisdiction of this Court. The core of their grievance is that the 1st Respondent failed to adhere to the procedural requirements prescribed under the Mosque and Muslim Charitable Trust or Wakfs Act No. 51 of 1956, as amended (hereinafter referred to as "the Act"). As stated in paragraph 30 of the petition, the Petitioners assert that upon applying for and obtaining the case records pertaining to Wakfs Tribunal Case No. 273/2020, they discovered that the reference made by the 1st Respondent to initiate proceedings before the Tribunal was marked as 'X21'.

The Petitioners contend that the reference made by the 1st Respondent was not in accordance with the provisions of the law. Consequently, they assert that the said reference is unlawful, procedurally flawed, and legally untenable, and therefore ought to be quashed.

Therefore, it is pertinent to refer to the relevant section in the Act. **Section 9E(2) and (3)** of the Act are hereby reproduced *verbatim* the same.

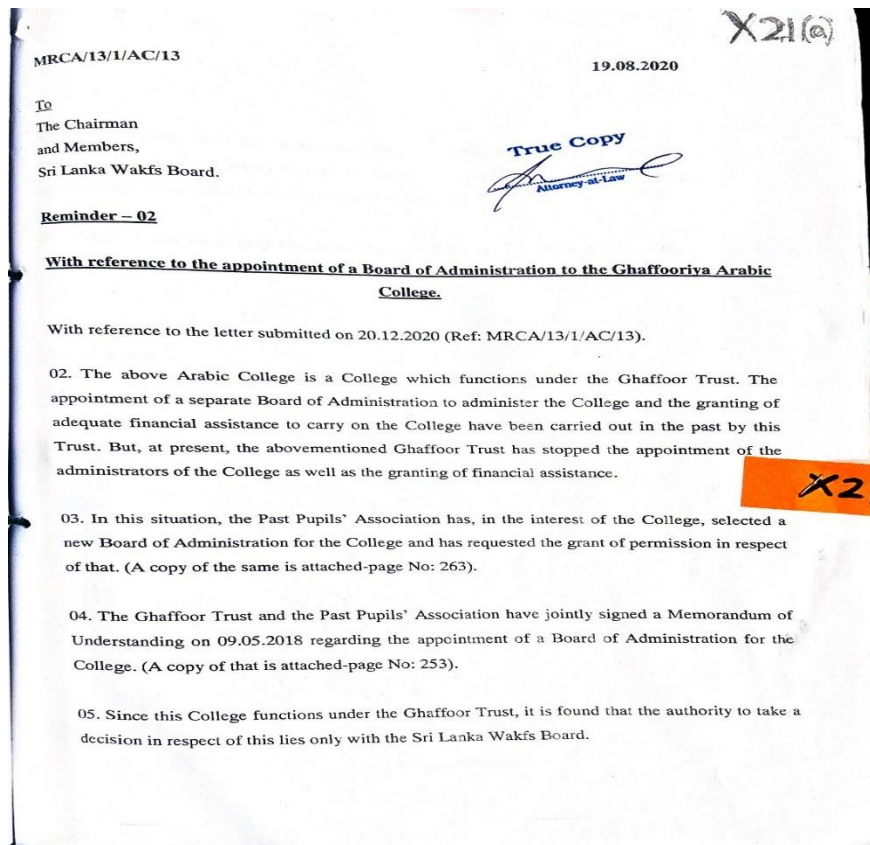
“General power of the Tribunal.

(2) Subject to the provisions of subsection (3), every application in respect of a Muslim charitable trust or wakfs shall be made by the Director upon a direction given by the Board in that behalf, or any five or more persons interested in that trust or wakfs.

(3) No application, other than an application made by the Director, shall be entertained by the Tribunal under this section unless the application is accompanied by a certificate under the hand of the Director that the application has been approved by the Board.”

The issue before this Court is whether the Wakfs Board had issued a directive in the matter, and whether, at the time the 1st Respondent–Director submitted his application to the Tribunal, he furnished a certificate evidencing that the application had received prior approval from the Board.

Pursuant to Section 9E(3) of the Act, the Tribunal lacks jurisdiction to entertain any application unless it is accompanied by a certificate issued by the Director. Upon close scrutiny, there is no indication of when the 1st Respondent referred the matter to the Tribunal. Specifically, as of 19.08.2020, there is no evidence to suggest that the Wakfs Board had approved the reference, nor that a certificate was filed along with the application. It is therefore relevant to reproduce the document marked as ‘X21’, which is the original in Tamil, and ‘X21(a)’, its corresponding English translation.



(15)
X21

தலைவர்,
மற்றும் உறுப்பினர்கள்,
இலங்கை வக்பு நியாய சபை.

நினைவுட்டல் - 02

கூழிய்யா அரபுக் கல்லூரிக்கு நிர்வாக சபையை நியமிப்பது தொடர்பாக.

(2020) 2.20 ஆம் திகதி (Ref: MRCA/13/1/AC/13) சமர்ப்பிக்கப்பட்ட கடிதம் தொடர்பாக.

02. மேற்படி அரபுக் கல்லூரி கபூர் அறக்கட்டளையின் கீழ் இயங்கி வருகின்ற ஒரு கல்லூரியாகும். கல்லூரியை நிர்வகிக்கும் தனியான நிர்வாக சபை ஒன்றை நியமித்தல் மற்றும் கல்லூரியை நடாத்திச் செல்வதற்கு போதுமான நிதி உதவிகளை வழங்குதல் என்பன கடந்த காலங்களில் இவ்வறக்கட்டளையின் மூலமே மேற்கொள்ளப்பட்டு வந்துள்ளன. ஆனால், தற்போது கல்லூரி நிர்வாகத்தை நியமிப்பதையும் நிதி உதவிகள் வழங்குவதையும் மேற்குறித்த கபூர் அறக்கட்டளை நிறுத்தியுள்ளது.

03. இந்திலையில், கல்லூரியின் நலன்கருதி கல்லூரிக் கான புதிய நிர்வாக சபை ஒன்று பழைய மாணவர்கள் சங்கத்தினால் தெரிவு செய்யப்பட்டுள்ளதுடன் அதற்கான அனுமதியினை வழங்குமாறு கோரியுள்ளனர். (அதன் பிரதி இணைக்கப்பட்டுள்ளது பக்க இல: 263)

04. கல்லூரி நிர்வாக சபையை நியமிப்பது தொடர்பாக கடந்த 2018.05.09 ஆம் திகதி கபூர் அறக்கட்டளையும் மற்றும் பழைய மாணவர் சங்கமும் இணைந்து புரிந்துணர்வு ஒப்பந்தம் ஒன்றைக் கைசாத்திட்டுள்ளனர். (அதன் பிரதி இணைக்கப்பட்டுள்ளது பக்க இல: 253)

05. இக்கல்லூரியானது, கபூர் அறக்கட்டளையின் கீழ் இயங்கிவருவதனால் இது தொடர்பான தீர்மானத்தைப் மேற்கொள்ளும் அதிகாரம் இலங்கை வக்பு நியாய சபைக்கே காணப்படுகின்றது.

06. அத்தோடு மேல் முறையிட்டு நிதிமன்றத்தில் தொடர்பின்ற கபூர் அறக்கட்டளை தொடர்பான வழக்கிற்கான இறுதி முடிவு வரும் வரையில் வக்பு நியாய சபையில் காணப்படுகின்ற வழக்கு இலக்கம் WI 268/2019 இனை இடைநிறுத்துமாறு இடைக்கால ஆணை உத்தரவொன்றை மேல் முறையிட்டு நிதிமன்றம் விடுத்துள்ளது. (பக்க இல. 265)

07. எனவே, கூழிய்யா பழைய மாணவர்கள் சங்கத்தினால் முன்வைக்கப்பட்ட வேண்டுகோளை உரிய நடவடிக்கைக்காக தங்களது மேலான சபைக்கு சமர்ப்பிக்கவேண்டும்.

A.B.M. அஷ்ரப்

முஸ்லிம் பள்ளிவாயல் மற்றும் நம்பிக்கை அறக்கட்டளை பணிப்பாளர்

04/05/2021

True Copy
Attorney-at-Law

06. Further, till the final determination in the Case relating to the Ghaffoor Trust which is pending in the Court of Appeal is made, the Court of Appeal has issued an Interim Injunction to suspend Case Number WT 268/2019 of the Wakfs Board.

07. Hence, I am submitting the request put forward by the Past Pupils' Association of Ghaffooriya College to your esteemed Board for necessary action.

Sgd. Illegibly

A.B.M.Ashraf

Director of Muslim Mosques and Trusts

Translation certified correct
E.P. Rajasekaran
13/05/2021

MRS. E. P. RAJASEKARAN
Government Sworn Translator,
Legal Draftsman's Department,
Colombo 12.

It is clear that, 1st Respondent has failed to submit the relevant certificate along with his application.

In Muslim Law in Sri Lanka by Dr. H.W. Tambiah Q.C. Ph.D. and Mohammado Markhani AAL at page 75 ;

“Every application in respect of a Muslim charitable trust or wakf shall be made by the Director upon a direction given by the Board in that behalf, or any five or more persons interested in that trust or wakf. It was also provided that no application other than an application by the Director, shall be entertained by the Tribunal under Section 9E unless the application is accompanied by a certificate under the hand of the Director that the application has been approved by the Board.”

Failure to file the director’s certificate along with the application was considered in **Sheriff and Others v. Jamaldeen, 2000 (2) SLR 190 at page 192, Weerasuriya, J held that;**

“Further, Section 29(7) as amended prohibits any application to the Wakfs Tribunal other than by the Director to be entertained unless the same is accompanied by a certificate under the hand of the Director that the application has been approved by the Board. Thus, one is justified in asserting that these provisions have no relevance to the instant case.

Learned Counsel for the plaintiff-appellants contended that plaintiff-appellants base their case in terms of Section 9J and that a certificate from the Director is totally unnecessary. However, it is to be observed that Section 9J provides the Wakfs tribunal to have exclusive jurisdiction to inquire into matters relating to Muslim Charitable Trust or Wakfs as provided for by Section 9E(1). Nevertheless, one has to be mindful that Section 9E(1) encompasses an inclusive provision.

It is convenient at this stage to consider the position the Director is placed with, in regard to the institution of proceedings in the District Court and Wakfs Tribunal.

Section 39(1) empowers the Director upon a direction given by the Board in that behalf in respect of a Muslim Charitable Trust or Wakf to institute action in the District Court to obtain relief as provided for in Section 39(1) (a) and (b).

Section 9E(2) authorises the Director upon a direction given by the Board in that behalf to make an application in respect of a Muslim Charitable Trust or wakf to the Wakfs Tribunal for relief in terms of Section 9E(1)(a)-(i).

It is a remarkable feature of these sections that the right of five or more persons to institute proceedings in the District Court in terms of Section 39(1) or the right to institute proceedings in the Wakfs Tribunal in terms of Sections 29(1) and Section 9E(2) is preceded by a condition that such plaint or application before the District Court or the Wakfs tribunal as the case may require, be accompanied by a certificate by the Director that such plaint or application as the case may be, has been approved by the Board. In fact, in all these provisions, District Court or the Wakfs Tribunal is precluded from entertaining such plaint or application as the case may be unless the same is accompanied by a certificate from the Director, Thus, it is a sine qua. non for persons interested in the trust or mosque to obtain a certificate from the Director if they wish to invoke the jurisdiction of the District Court or Wakfs Tribunal as the case may require.” [Emphasis is mine]

It is also noted that the 1st Respondent has submitted documents marked as ‘R1’. According to the contents of ‘R1’, the Wakfs Board convened a meeting on 20.12.2020, during which a board paper dated 11.12.2020 was tabled by the Director. Through this paper, the Director sought a direction from the Board pursuant to Section 9E(2) of the Act.

However, the document labeled ‘X21’ contains no reference to any requisite board approval, which is a mandatory prerequisite for invoking the jurisdiction of the Wakfs Tribunal. It clearly indicates that the director submitted an application to the Tribunal

without first obtaining the board's consent. Consequently, he has not adhered to the procedural requirements prescribed by the statute.

Therefore, it is evident that for the Wakfs Tribunal to validly assume jurisdiction, strict compliance with Section 9E(3) is imperative. In particular, the director must obtain prior approval from the Wakfs Board in accordance with Section 9E(2). This approval constitutes a mandatory condition precedent, without which the Tribunal cannot lawfully exercise its jurisdiction.

“(3) No application, other than an application made by the Director, shall be entertained by the Tribunal under this section unless the application is accompanied by a certificate under the hand of the Director that the application has been approved by the Board.”

Therefore, we hold that failure to file the certificate is fatal and bad in law.

There is no indication in the referenced document marked as 'X21' that the Director obtained approval from the Wakfs Board. In fact, under the relevant provisions, the Wakfs Tribunal is expressly barred from entertaining any application unless it has been duly approved by the Board. In other words, for the Director to invoke the jurisdiction of the Wakfs Tribunal, prior approval from the Board is a mandatory prerequisite.

In the present case, the Director has failed to secure such approval, thereby neglecting to comply with the procedural requirements outlined in Section 9E(2) and (3) of the Act. This non-compliance with a statutory condition precedent results in a fundamental lack of jurisdiction. Consequently, any order issued by the Tribunal in this matter is void ab initio.

Maxwell on Interpretation of Statutes, 12th edition, Pg. 328, referring to 'conditions precedent to jurisdiction' states that,

“ Where an act or thing required by statute is a condition precedent to the jurisdiction of a tribunal compliance cannot be dispensed with and, if it be impossible, the jurisdiction fails. It would not be competent to a court to dispense

with what the legislature has made the indispensable foundation of its jurisdiction.”

This was considered by Sureshchandra, J in **Antony Fernando V. Deepthi Lakmali [2012] 2 SLR 81.**

In the document marked ‘X21’, it is clear that ‘X21’ did not indicate that the 1st Respondent had obtained approval and direction from the board to file this application in the tribunal.

In the circumstances, without obtaining the direction of the board, assuming the jurisdiction of the tribunal constitutes a patent lack of jurisdiction. Whatever orders made thereafter are void *ab initio* and a nullity.

The said error could be itemized as procedural impropriety under judicial review.

The concept of procedural impropriety was discussed by His Lordship Janaka De Silva in **P.R. Madduma Banda Mawanella Hemmathagama Multipurposes Co-Operative Society And Others C.A. (PHC) 68/2010 in CA Minute 05.10.2018** wherein his Lordship states,

*“I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. **This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred**, even where such failure does not involve any denial of natural justice....”* [Emphasis is mine]

In the present case, there is substantial evidence indicating that, before the reference made by the 1st Respondent, no approval was obtained from the Board. As such, the proceedings initiated thereafter are rendered void *ab initio* and constitute a legal nullity.

It is pertinent to refer to the words used by His Lordship Justice Samayawardena in **Wathukarage Samatha Merrill Kumara Vs. National Gem and Jewellery Authority and 7 Others SC/MISL/04/2014 decided on 07.02.2025** at page 7 wherein it was held that,

“If a decision is ultra vires, it is a nullity for all intents and purposes. It is void, not voidable. Everything that stems from a decision which is a nullity also automatically becomes a nullity without further ado.”

In light of the foregoing reasons, the proceedings in WT/273/2020 are deemed void ab initio and of no legal effect. Accordingly, the documents marked 'X20' and 'X21' are hereby quashed.

It is pertinent to note that, as per our determination in Case No. CA/LTA/0006/22, the deed bearing No. 2125 does not constitute a Muslim Charitable Trust. Accordingly, there is no necessity to revisit or adjudicate that issue within the scope of the present application.

Consequently, the Wakfs Tribunal lacks jurisdiction to adjudicate the issue concerning the alleged trust. Hence, the application stands allowed.

Accordingly, the relief sought in the petition dated 11 June 2021 is hereby granted. A Writ of Certiorari is issued, thereby quashing the purported reference dated 19 August 2020, marked 'X 21', as well as the purported notice dated 22 January 2021, marked 'X 20'.

JUDGE OF THE COURT OF APPEAL

R. Gurusinghe, J

JUDGE OF THE COURT OF APPEAL

I agree,

R.P. Hettiarachchi J.

JUDGE OF THE COURT OF APPEAL

I Agree,