

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 Mandamus under and
in terms of article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.

CA/WRIT/305/2023

1. Beddage Tushara
Wickramanavaka
2. Adriana Lakshya Wickramanayaka
Cutter
Both of "Ixora Villa"
No. 570, Fatima Road,
Kochchikade.

Petitioners

1. Officer in Charge,
Special Police Investigation Unit,
National Child Protection Authority,
No. 330, 'Thalawathugoda Road,
Madiwela, Sri Tavawardenapura
Kotte,
2. National Child Protection Authority,
No. 330, 'Thalawathugoda Road,
Madiwela
Sri Tavawardenapura Kotte.
3. C. U. Amarasinghe, Chairman
National Child Protection Authority,
No. 330,
Thalawathugoda Road,

Madiwela Sri Jayawardenapura Kotte.

4. Sujatha Alahapperuma

Deputy Chairperson

National Child Protection Authority,

No. 330,

Thalawathugoda Road,

Madiwela Sri Jayawardenapura Kotte.

5. Dr. Swarna Wijethunga

Director

National Child Protection Authority,

No. 330, Thalawathugoda Road,

Madiwela Sri Jayawardenapura Kotte.

6. Susantha Balapatabendi PC

Director

National Child Protection Authority

No. 330, Thalawathugoda Road,

Madiwela Sri Jayawardenapura Kotte

7. Dr. Senaka Gunathilake

Director

National Child Authority, No. 330,

Thalawathugoda Road, Madiwela, Sri

Jayawardenapura, Kotte.

8. Dr Ajith Thennakoon

Director

National Child Protection Authority,

No. 330, Thalawathugoda Road,

Madiwela, Sri Jayawardhenapura

Kotte.

9. Hemal Kasthuriarachchi

Director

National Child Protection Authority
No. 330, Thalawathugoda Road,
Madiwela
Sri Jayawardhenapura Kotte.

10. Dr. Pavithra K.S. Godamunne,
Director
National Child Protection Authority,
No. 330,
Thalawathugoda Road,
Madiwela Sri Jayawardenapura Kotte.

11. Ashoka Alawatta
Director
National Child Protection Authority,
No. 330,
Thalawathugoda Road, Madiwela
Sri Jayawardenapura Kotte.

12. Dr. Kapila Bandara
Director
National Child Protection Authority,
No. 330,
Thalawathugoda Road,
Madiwela Sri Jayawardenapura Kotte.

13. B. K. Chandrakeerthi
Director
National Child Protection Authority,
No. 330,
Thalawathugoda Road,
Madiwela Sri Jayawardenapura Kotte.

14. M. H. G. Bandara
Director

National Child Protection Authority,
No. 330,
Thalawathugoda Road,
Madiwela Sri Jayawardenapura Kotte.

15. CD. Wickramarathne

The Inspector General of Police,
Police Head Quarters,
Colombo 1.

16. The Hon. Attorney General

The Attorney General's Department
Hulftsdorp,
Colombo 12.

17. National Authority for the Protection of

Victims of Crime and Witnesses,
1st Floor,
No.428/11A,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

Respondents

Before : N. Bandula Karunarathna P/CA, J.
B. Sasi Mahendran, J.

Counsel: Upul Jayasuriya, PC for the Petitioner.
Suharshi Herath, DSG for the Respondent.

Writ

Submissions: 02.04.2024 (by the Petitioner)

On: 19.04.2024 (by the Respondents)

Argued on: 29.02.2024

Judgment **On:** 15.05.2024

B. Sasi Mahendran, J.

Petitioner has instituted this action to obtain the following reliefs prayed for in the prayer of the amended Petition dated 30th June 2023.

- a. Issue Notice on the Respondents;
- b. Grant and issue a mandate in the nature of a Writ of Mandamus, compelling the 1st and/ or 2nd and/ or 3rd to 14th Respondents and/or the 16th Respondent, or any one or more of them to take any and all steps necessary to name and/or disclose and/or apprehend and/or prosecute the alleged wrongdoers forthwith in respect of the Magistrate's Court of Negombo in Case bearing No. L/ 60041/18;
- c. Grant and issue a Mandate in the nature of a Writ of Mandamus, compelling the 1st and/or 2nd and/or 3rd to 14th Respondents and/or the 16th Respondent, or any one or more of them to prosecute the matter before the Magistrate's Court of Negombo in Case bearing No. L/ 60041/18 expeditiously by taking necessary and appropriate steps to retrieve and compile evidence inter alia as reflected in the journal entry dated 23.02.2023 (as reflected in the Journal entries marked P5(a)] in the Magistrate's Court of Negombo in Case bearing No. L/ 60041/18 and produce the said evidence before the Learned Magistrate in the said Case bearing No. L/ 60041 / 18;
- d. Grant and issue a Mandate in the nature of a Writ of Mandamus, compelling the 1st and/or 2nd and/or 3rd to 14th Respondents and/or the 16th Respondent to prefer a motion in the said Court in Case bearing No. L/ 60041/18, seeking to call the matter prior to the next date fixed by Court i.e., 23.11.2023 and as expeditiously as your Lordships Court directs pursuant to taking steps in the manner as prayed for in prayer C;
- e. Grant and issue an interim order directing the 1st and/or 2nd and/ or 3rd to 14th Respondents and/or the 16th Respondent, or any one or more of them to retrieve evidence, in particular, the Compact Disc in the possession of the 16th Respondent that is purportedly dysfunctional as intimated to Court by the 1st and/or 2nd Respondents on 02.02.2023, which contains evidence material to the case and is essential for the analysis of the Government Analyst, and produce the same before the Magistrate's Court of Negombo in case bearing No. L60014/18 forthwith;

- f. Grant and issue an interim order directing the 1st and/or 2nd and/or 3rd to 14th Respondents and/or the 16th Respondent, or any one or more of them to obtain and produce before the Magistrate's Court of Negombo in case bearing No. L60014/18, the report of the National Authority for the Protection of Victims of Crime and Witnesses in relation to this case forthwith;
- g. Grant Costs and
- h. Grant the Petitioners such other and further reliefs as Your Lordships' Court shall seem meet.

Facts of the Case

The facts of the case are that, where the 2nd Petitioner, who was the daughter of the 1st Petitioner, a student of the Gateway School of Negambo was punished along with other students on 12.01.2018 by a teacher of the aforesaid school for the reason of neglecting to bring the English reading book on the particular day.

The punishment was that they were made to kneel down in the classroom for several minutes and the teacher has pulled the 2nd Petitioner's ear violently. Therefore the 1st Petitioner complained to the Principal against the teacher.

Since the Principal failed to take any action against the said Teacher, 1st Petitioner made a complaint to the *Seeduwa* Police Station. There was an undertaking given by the Principal that, the 2nd Petitioner would no longer be harassed as the said teacher has resigned and the matter was amicably settled between the parties.

According to the 1st Petitioner, despite the aforesaid undertaking given by the Principal, the 2nd Petitioner complained that she was constantly harassed by the teachers and other students. Therefore he has proffered a complaint to the 2nd Respondent on 25.01.2018 regarding the punishment given to his daughter. On the complaint, the 1st Respondent reported the facts to the Magistrate Court of *Negambo* bearing the case No. L60041/18. The Learned Magistrate has referred this matter to the Hon, Attorney General for further advice.

According to the Petitioner, the Hon. Attorney General has advised to the 2nd Respondent that a plausible charge against the suspect could be the injury caused to the 2nd Petitioner. According to the written submission filed by the Respondent, it indicates that the particular DVD and the Government Analyst Report were later sent to the Hon. Attorney General to obtain further advice by the 2nd Respondent while this case is pending before this Court.

They have further pleaded that, the 16th Respondent now considering whether there is any fresh evidence available against the suspect to prosecute or not. The issue before us is, whether the Petitioner has a legal right to compel the Attorney General to perform his duties. The prosecutorial discretion to arrive at a decision after considering the facts and circumstances, the Attorney General is vested with vast powers under section 393 of the criminal procedure code. The said discretion could not be challenged unless the Petitioner shows that the Attorney General action is *mala fide*.

In the Case of **Fakhir v. Attorney General 2021 (1) SLR 230 at Page 235**, Obeyesekere, J.P/CA held that;

“It is significant to note that the learned Counsel for the Petitioner is not alleging dishonesty or mala fides on the part of the Attorney General in indicting the Petitioner, but, as I have already stated, is only complaining that there is no factual basis to sustain the charge against the Petitioner.”

In the instant case the Petitioner has not alleged that the Attorney General’s actions are mala fide or not have properly considered the evidence placed before him. Therefore, we hold that the decision taken by the Hon. Attorney General is lawful.

In addition the Petitioner has prayed for Writ of Mandamus compelling the 16th Respondent to prosecute the matter expeditiously. We are mindful that any person seeks for writ of mandamus must show that there is a legal duty towards him by the party against whom the mandamus is sought.

In the instant application, the Petitioner has failed to establish that the Attorney General has a legal duty towards him, to prosecute the matter expeditiously before the Magistrate Court Negambo in case bearing No L60041/18.

This was considered in the following judgment,

In Ratnayake and Others v C.D. Perera and Others [1982] 2 SLR at 4501 page 456
Sharvananda, J. (as he was then) with Victor Perera, J. and Colin-Thome, J. agreeing held;

“The general rule of mandamus is that its function is to compel a public authority to do its duty. The essence of mandamus is that it is a command issued by the Superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest.”

The above judgment was followed in the following case.

Janak Housing (Pvt) Ltd. And Another v. Urban Development Authority, [2008] 2 SLR 302 at page 304, S. Sriskandarajah, J.

“The petitioner to seek a writ of mandamus must show that there resides in him a legal right to the performance of a legal duty by the party against whom the mandamus is sought. Therefore that a mandamus may be issued to compel something to be done under a statute and it must be shown that the statute imposes a legal duty.”

For the above said reasons, we dismiss this application with costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna, J (P/CA)

I AGREE

PRESIDENT OF THE COURT OF APPEAL