

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

In the matter of an application for
Writs of Certiorari and Mandamus
under and in terms of Article 140 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Samadhi Anuranga Gamlath
210, Liyanwala,
Padukka

CA/Writ/0146-2020

Petitioner

Vs

1. Theshara Jayasinghe
Chairman/Director General,
National Youth Services Council,
No. 65, High Level Road,
Maharagama.
2. National Youth Services Council
No. 65, High Level Road,
Maharagama.
3. Liyanagama Kankanamage Pasindu
Srimal
Student Registration Number 33763
C/o Sri Lanka Law College,
244, Hulftsdorp Street,
Colombo 12.
4. Bilal Marikar
Student Registration Number 33753
C/o Sri Lanka Law College,
244, Hulftsdorp Street,
Colombo 12.

Respondents

Before : **Hon. M. Sampath K. B. Wijeratne, J. (CA)**
: **Hon. M. Ahsan R. Marikar, J. (CA)**

Counsel: Thishya Weragoda and Chamodi Wijeweera for
the Petitioner.
Deeptha Perera for the 1st and 2nd Respondents.

Written Submission : Filed on 02.10.2023 by the Petitioner
Filed on 07.11.2023 by the 1st and 2nd
Respondents

Argued on : All parties agreed on deciding the matter on
written submission.

Decided on : 15.12.2023

M. Ahsan R. Marikar, J. (CA)

Introduction

- 1) The Petitioner had instituted this action to invoke the Writ Jurisdiction of this court to obtain the reliefs prayed for in the prayer of the petition dated 30th June 2020.
- 2) The reliefs sought by the petition dated 30th June 2020 is referred to as follows;
 - a) issue Notice on the Respondents.
 - b) obtain a mandate in the nature of a Writ of Certiorari to quash the purported decision made by the 1st Respondent and/or 2nd Respondent to annul the results of the election held to elect a representative from the Law College to the Sri Lanka Youth Parliament 2020 as disclosed in letter marked 04th March 2020.
 - c) obtain a mandate in the nature of a Writ of Mandamus directing the 1st and/or 2nd Respondent to appoint the Petitioner as the elected

representative of the Sri Lanka Law College to the Sri Lanka Youth Parliament 2020.

d) grant an Interim Order restraining the 1st Respondent and/or 2nd Respondent and/or those claiming there under from convening the Sri Lanka Youth Parliament 2020 until the final determination of this matter.

Facts of the case

- 3) The Petitioner is a law student at the Sri Lanka Law College of Colombo from February 2018. He had been elected as the President of the Law College Student Union.
- 4) The 1st Respondent is the Chairman of the National Youth Services Council. The National Youth Services Council is the 2nd Respondent which will be referred to as NYSC hereinafter. The NYSC had been established with the aim of empowering the youth, facilitating diverse learning opportunities and to create a platform for the youth to raise their voices in respect of the issues that affect the youth and the communities. The Youth Parliament was established in order to facilitate the aforesaid facts.
- 5) The majority of the members of the Youth Parliament are elected through an election process. The candidate of the Youth Parliament represents Youth Clubs/Institutions of their respective Districts, several recognized National Higher Education Institutions including Universities and other Academic Institutions including the Sri Lanka Law College.
- 6) The 1st Respondent had written to the Principal of the Sri Lanka Law College informing that the students are given an opportunity to take part in the Youth Parliament. Thereby had intimated that a student representative needed to be elected to represent the Sri Lanka Law College.
- 7) On the aforementioned letter of the 1st Respondent had stated the NYSC anticipates nomination from the Sri Lanka Law College and shall be called on 25th February 2020 and the election should be held on 2nd March 2020

at the Sri Lanka Law College. The Petitioner and the 3rd and 4th Respondents had submitted their nominations to contest the said election.

- 8) However, the Principal of the Sri Lanka Law College had responded to the 1st Respondent's letter that the Principal does not have the authority to grant permission to hold the election without obtaining prior approval of the Council of Legal Education.
- 9) As the Sri Lanka Law College had not granted permission, the election had been held at the Divisional Secretariat Hulftsdorp Colombo as scheduled. The election results had been published on the website. Accordingly, the Petitioner had obtained the majority of the votes.
- 10) On or around 4th March 2020 the said election results were removed and not visible to the public. The Sri Lanka Law College was not included in the said list. The Petitioner has contended that the 1st Respondent had annulled the law students' election results after receiving the letter sent by the Principal, Sri Lanka Law College.
- 11) On the said grounds, the Petitioner had stated that the said decision taken by the 1st Respondent is wrongful, unlawful, arbitrary, mala fide, and ultra virus and it violated the legitimate expectation of the Petitioner. Therefore, the Petitioner had sought the reliefs prayed for in the petition.
- 12) The 1st and 2nd Respondents had denied the aforesaid position and contended the order sought to be quashed, is not an order with statutory flavour.
- 13) Further, the 1st and 2nd Respondents had stated that the National Youth Parliament is a project of NYSC and is not governed by any statute or any Gazette notification.
- 14) The said process relating to the election of Youth Parliament is governed by the National Youth Parliament Constitution.
- 15) The 1st Respondent has the authority to annul any election on the recommendation of the District and/or National Committee if any

malpractice, unlawful or any act of indiscipline was to take place at the election.

- 16) The election to nominate a student from the Sri Lanka Law College was annulled as the Legal Council had not authorized the Principal to hold the election at the Sri Lanka Law College.
- 17) The Petitioner had used undue influence to get himself nominated at the election held at the Divisional Secretariat and the other students had not been given an opportunity to participate at the said elections.
- 18) Considering the said facts as recommended by the National Committee of the Youth Council, the 1st Respondent had decided to annul the elections.
- 19) On the said grounds, the Respondents have sought to dismiss the application made by the Petitioner.

Disputed facts

- 20) When this matter was taken up for argument on 4th September 2023 both parties agreed to conclude the case by way of written submissions.
- 21) Considering the written submissions and the documents submitted by the Petitioner and the Respondents the following disputed facts need to be considered to arrive at my conclusion.
 - I. Is the 2nd Respondent a statutory authority?
 - II. If so, is selecting candidates for the Youth Parliament governed by the said statutory provisions?
 - III. If not, can the decision taken by the 1st and 2nd Respondents to annul the elections of the Sri Lanka Law College be quashed invoking the rights of the Writ Jurisdiction?

I. Is the 2nd Respondent a statutory authority?

- 22) The 2nd Respondent has admitted that the 2nd Respondent, National Youth Service Council is a statutory body. However, the said National Youth Service Act No. 69 of 1979 had not provided any provisions as stated in paragraph 3b of the petition.
- 23) In the said circumstances, it can be admitted that the 2nd Respondent is a statutory body and the 1st Respondent is the Chairman/Director General of the National Youth Services Council.

II. If so, is selecting candidates for the Youth Parliament governed by the said statutory provisions?

- 24) The issue that had arisen in the instant action was quashing the election held by the Youth Services Council for the Sri Lanka Law College students to select a member for the National Youth Parliament on 2nd March 2020.
- 25) The 1st and 2nd Respondents have taken up a preliminary objection that the letter or the order the Petitioner is seeking to quash is not an order with a statutory flavour.
- 26) In considering the said preliminary objection, the National Youth Service Council Act does not refer to establishing the Sri Lanka Youth Parliament. There is no statute to prove the Youth Parliament is governed by the National Youth Service Council Act. The only proof established by the Petitioner is that there is a Constitution under which the election process and the nominations were governed for selecting the Youth Parliament which is not a statute and it is only incorporated to manage the affairs of the Sri Lanka Youth Parliament.
- 27) In observing the said facts, on the face of it, the Petitioner has failed to establish in this application that the decisions taken by the 1st Respondent is binding under the National Youth Service Council Act.
- 28) Therefore, the most pertinent issue in this application is, can the said decision be challenged under the Writ Jurisdiction. In a decided case of

Trade Exchange (Ceylon) Ltd., v Asian Hotels Corporation¹, in the said judgement it was held by the Supreme Court that only a State organ created by a statute would be amenable to writ, and a company in which the State (through the CWE) held 90% of the shares was not amenable to writ.

- 29) Further, in the case of **Meril v Dayananda de Silva and others**² Justice U. De Z. Gunawardana in reference to the facts of the case expressed that;

‘As certiorari and mandamus...are public law remedies, it is important to know whether the relevant issue or decision under consideration in this matter involves public law... The answer to the question on the issue is: a public law issue depends on either of the two matters or on both viz (i) source of power of the authority making the decision; (ii) the nature of the function that the authority exercises, or, sometimes, on both the above consideration’.

- 30) In the book, **‘Administrative Law’**³ by Sir William Wade it is stated that;

‘Certiorari and prohibition are employed primarily for the control of inferior courts, tribunals and administrative authorities... Both certiorari and prohibition, in their modern applications for the control of administrative decisions, lie primarily only to statutory authorities. The reason for this is that nearly all public administrative power is statutory’.

¹[1981] 1 SLR 67.

²[2001] 2 SLR 11 at pg 32.

³ Sir. William Wade, *Administrative Law* (9th edn, OUP, 2004) 605.

- 31) Further, S.F.A. Coorey in his **‘Principles of Administrative Law in Sri Lanka’**⁴ states that;

‘If a public officer in the discharge of official duties makes a decision in violation of, or in disregard of circular, instructions or rules, the question arises whether such decision could be quashed by certiorari. If such circular, instructions or rules, does not have the status of law or statutory force, no certiorari lies’.

- 32) It is obvious, as per the aforesaid decisions, a Writ Jurisdiction is a public law remedy. Therefore, the Petitioner seeking to quash the order made on the Constitution of the Youth Council has no bearing of an administrative decision taken by the 2nd Respondent.

III. If not, can the decision taken by the 1st and 2nd Respondents to annul the elections of the Sri Lanka Law College be quashed invoking the rights of the Writ Jurisdiction?

- 33) Now, I draw my attention to the prayers pleaded by the Petitioner in his petition dated 30th June 2020.
- 34) The Petitioner by the said prayers has sought to quash the 2nd Respondent’s decision made by the letter dated 4th March 2020 under the Writ of Certiorari and to direct the 1st and 2nd Respondents to appoint the Petitioner to the Youth Parliament issuing a Writ of Mandamus.
- 35) On perusal of the journal entries this Court has not issued an interim order in the instant action. The Petitioner has pleaded to quash the letter issued by the 2nd Respondent to cancel the election held by the National Youth Services Council to select a member from the Sri Lanka Law College to the Youth Parliament and to nominate him for the Youth Parliament of 2020.

⁴ Sunil F. A. Coorey, *Principles of Administrative Law in Sri Lanka* (4th edn, 2020) 922.

- 36) For the said Youth Parliament, appointment of candidates has already lapsed and for the year 2020 the Youth Parliament would have already been appointed.
- 37) Therefore, at this stage there is no relief that can be granted in the instant action.
- 38) In the said circumstances, I am of the view this application cannot be maintained in this court under Writ Jurisdiction. The Petitioner should have sought remedy at that stage from a different judicial forum.
- 39) In considering the said facts, I am not continuing with the other disputed facts as the Petitioner cannot maintain this action.

CONCLUSION

- 40) In view of the aforesaid facts, I dismiss the petition dated 30th June 2020. No cost ordered.

Judge of the Court of Appeal

M. Sampath K. B. Wijeratne, J. (CA)

I agree

Judge of the Court of Appeal