

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

*In the matter of an Application for an
order in the nature of Writs of Certiorari
and Mandamus in terms of Article 140 of
the constitution*

CA (Writ) Application No. 130 / 2015

Muthukumaraswamy Wanniyasekaram,
No. 101,
Flower Court Apartments,
Flower Road,
Colombo 07.

Petitioner

Vs

1. Board of Trustees of Bhagavan Sri Satya
Sai Central Trust of Sri Lanka,
Barnes Place,
Colombo 07.
2. Devanayagam Pillai Eassuwaran,
No. 104/1,
Grandpass Road,
Colombo 14.

3. Tissa Wickremarachchi Karunaratne
No. 180,
Yakkala Road,
Gampaha
4. Abeykoon Bandara Talagune
No. 612,
Halgasdeniya Road,
Mulleriyawa New Town
5. Lakshman Watawala
No. 102/5,
Barnes Place,
Colombo 07.
6. Hemaka Amara suriya
No. 30 / 15,
Park Road,
Colombo 05.
7. Dammika Kalapuge
No. 37,
Rosmead Place,
Colombo 07.
8. Malini Sabaratnam
No 9/2,
Station Road,

Colombo 04.

9. Janaka Weerakoon

No. 532/20,

Sibel Place,

Kandy.

10. Rajendra Vasanthasenam,

No.03,

Hospital Lane,

Manipay,

Jaffna.

11. Dr Nadarasa Guna Premadasan,
Prashanthui,

Mandur,

Eastern Province.

12. Nagalingam Pugendran,

No. 105,

Kandaswamy Kovil Road,

Trincomalee

13. Narendranath Reddy,

International Chairman Prashanthi
Council,

No. 1220,

Oaklawan Road,

Areadia,

California 91006,

USA

E-mail: Nreddysai@yahoo.com

14. Dr. V Jeganathan

Chairman of Central Council of Sri
Lanka,

Sri Sathya Sai Organization of Sri Lanka,
19/1,4/4,

Skylark Apartments,

Fedrica Road,

Colombo 06.

Respondents

Before: Vijith K. Malalgoda PC J (P/CA)

P. Padman Surasena J

Counsel: Jacob Joseph for the Petitioner

Manohara de Silva, PC with A Wijesurendra for the 1st - 5th, 7th -
12th & 14th Respondents

Argued on: 2016-06-15

Written submissions

for the Petitioner on : 2016-07-05

for the 1st - 5th, 7th - 12th & 14th Respondents on : 2016-07-01

Decided on : 2016-09-07

JUDGMENT

P Padman Surasena J

The Petitioner in his petition has stated in his petition

- I. that he is a founder member of the board of trustees of Bagawan Sri
Sathya Sai Centre Trust of Sri Lanka

- II. that he was compelled by *duress* to tender his resignation on or about 2009-03-12 as the international chairman of the Prasanthi Council of Bagawan Sri Sathya Sai Organization Dr. Michael Goldstine ordered him by a telephone message to tender his resignation
- III. that the 2nd Respondent did not acknowledge or accept the said purported resignation
- IV. that he by a letter dated 2009-11-10 addressed to the 2nd Respondent withdrew the purported resignation which was not accepted by the board of trustees of the 1st Respondent
- V. that the 3rd respondent by his letter dated 2014-09-30 informed him that he has not been removed but has resigned from his position as a trustee of the 1st Respondent and that the trust has acted on the basis of his resignation. This letter has been marked and produced as **P 05.**

It is convenient to turn to the prayers of the Petitioner before proceeding further. The Petitioner has prayed *inter alia*

- a) for a writ of certiorari to quash the decisions / determinations contained in the documents marked **P 05** dated 2014-09-30 and **P 08** dated 2014-12-18

b) for a writ of Mandamus to compel and / or direct the 1st - 5th and 7th - 12th & 14th Respondents to perform the statutory and public duties and functions and recognize and allow the Petitioner to function as a member of the board of trustees of the 1st Respondent.

It was the submission of the learned Counsel for the Petitioner that the Writ jurisdiction of this court could be invoked in this case because it was by an Act of Parliament that the 1st Respondent has been incorporated.

Learned President's Counsel who appeared for the 1st - 5th, 7th - 12th & 14th Respondents however submitted that this is not a case in which Writ jurisdiction of this Court could be exercised.

Lord Justice Atkin, has summed up, the circumstances in which the Writs of Certiorari and prohibition are available in the following famous words which on numerous occasions have been cited and followed by our courts; It is as follows.

" whenever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the Kings bench division exercised in these writs."

For convenience, this dictum could be broken up to form into several limbs in the following manner;

"whenever anybody of persons

- I. having legal authority
 - II. to determine questions affecting the rights of subjects, and
 - III. having the duty to act judicially
 - IV. act in excess of their legal authority,
- they are subject to the controlling jurisdiction of the Kings bench division exercised in these writs."

In the light of the facts of the case in hand, it becomes relevant to observe that what the above dictum contemplates are rights which are of public nature as opposed to rights of private nature. Hence the primary question that this Court has to consider is, whether a Writ would, in the light of the given set of facts, lie against the Respondents of this case.

The name of the relevant Act is "Board of Trustees of the Baghawan Sri Sathya Sai Central Trust of Sri Lanka (Incorporation) Act, No. 38 of 2007". The preamble of the Act makes it clear that the purpose of the Act is to incorporate this trust. Section 5 of the Act deals with the powers of this trust amongst which nothing of public nature is found. Indeed only a glance through this Act would be sufficient to conclude that none of the Respondents named in this Petition has been vested with any legal authority to determine questions affecting the rights of subjects as

envisaged in the above dictum. In other words this Act has not entrusted any authority on the trustees of this trust, the exercise of which would bring them amenable to the Writ Jurisdiction of this Court which is governed by a regime of Public Administrative Law.

What this Court has held in Nanayakkara Vs. Institute of Chartered Accountants of Sri Lanka 1981(2) SLR 52, a judgment relied upon by the Petitioner, is that though there is a master and servant relationship between the Parties, the relevant regulations had been made by the relevant Council by virtue of Statutory power given to it under the statute creating the said institute.

However in the instant case the Petitioner has not shown to the satisfaction of this Court that any of the Respondents in this case at this instance was acting under any statutory power. Further, examination of sections of this particular Act shows that no such statutory power has been entrusted to any of the Respondents to do any act which is capable of determining any rights as such of the Petitioner.

The essential requirement of presence of a Public element for Judicial Review, has been referred to, in the case of Rev. Keselwatugoda Chandananda Thero Vs. Rev. Sirimalwatte Ananda Mahanayaka Thero and others [1996 (2) S L R 287], in the following quotation the court has cited in that case. "Decisions of leaders of particular faiths on disciplinary issues

are also, as authorities stand, not judicially reviewable. That is because there is no sufficient public element and no statutory underpinning." **De Smith - Judicial Review of Administrative Action; 5th Edition; Page 186** , which this Court had adopted in that case.

Further, Section 12 of Board of Trustees of the Baghawan Sri Sathya Sai Central Trust of Sri Lanka (Incorporation) Act No. 38 of 2007, states that nothing contained in this Act shall prejudice or affect the rights of the Republic or of any body politic or corporate or of any other persons. This also demonstrates the non-public nature of the provisions of this Act.

The case of Saheer v. Board of Governor of the Zahira College 2002 (3) SLR 405 relied upon by the learned Counsel for the Petitioner in his written submissions has been decided on the basis that the Board of Governors is amenable to writ Jurisdiction since the Board of Governors is bound by the regulations made by the Minister of Education under section 37 of the Education Ordinance. That is clear from the following excerpt from that judgment.

"..... Mr. Gunasekera invited attention of Court to the regulations made by the Minister of Education under section 37 of the Education ordinance. The said regulations required all assisted schools and unaided schools to conform to requirements stated therein in regard to the qualifications, appointments, etc., of teachers and provided that teachers who do not conform to the conditions stipulated in the said regulations and who are

already in service to obtain the approval of the Minister to continue in service. The regulations made it obligatory for the management of such schools to make the requisite applications to the Minister. The argument that the petitioners as parents of students at Zahira College enjoyed nothing more than the contractual relationship is therefore without merit.
..... "

It could therefore be seen that the Petitioner cannot get any support from the judgments he had relied upon.

Further The Petitioner himself admits in his Petition that he tendered his resignation on 12.03.2009. He had sought to withdraw his resignation by a letter dated 2009-11-10. It was by letter dated 2014-09-30 (**P 05**) that the 3rd Respondent had informed him that he has not been removed but that the trust has acted on the basis of his resignation. The Petitioner had filed the instant application on 12.03.2015.

The inference that this Court can come to, from the above facts is that the Petitioner has made an unsuccessful attempt to seek the intervention of this Court almost 06 years after his resignation. This fact also has to be held against the Petitioner as it has amounted to an undue delay.

The petitioner has failed to establish that a public functionary has violated any of his legally protectable rights, it is therefore the view of this court

that Writ jurisdiction of this court cannot be made available either to issue a writ of certiorari to quash the decisions contained in the document marked **P 05** or to issue a writ of Mandamus to compel the Respondents to recognize the Petitioner as a member of the board of trustees.

Learned President's Counsel who appeared for the 1st - 5th, 7th - 12th & 14th Respondents also took up the position that the proper course of action that would have been invoked by the Petitioner, would be under the Trust Ordinance under Section 101 and, or section 102 of the Trust Ordinance in order to have this matter resolved. It could therefore be seen that the remedy to resolve the petitioner's dispute lies elsewhere.

In these circumstances and for the foregoing reasons we decide to refuse this application with costs.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL