

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.

Jayathunga Patabandige Susil Priyantha
Jayathunga,
No. 294/A,
Kotupathgoda Road,
Kumbuka Western,
Gonapola.

CA/WRIT/0635-2021

Petitioner

Vs

1. Hon. Judge Mr. Ruchira Welliwatta
District/Magistrate Court,
Kesbewa.
2. Arosha Manthika Price
No. 272/15, Miriswatte,
Piliyandala.
3. Lesley Norman Price
No. 272/15, Miriswatte,
Piliyandala.
4. Mayquin Claudia Price
No. 246, Colombo Road,
Kurunegala.
5. Attorney General
Attorney General's Department
Colombo 12.

Respondents

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

Counsels : J.P.S.P Jayathunga, the Petitioner appearing in person

Eraj de Silva with Daminda Wijeratne instructed by Jagath Talgaswattage for the 2nd and 3rd Respondents

Yuresha Fernando, D.S.G for the State

Written Submissions : Filed on 2023 by the Petitioner
Filed on 2023 by the 1st and 2nd Respondents

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

Decided on : 12.01.2024

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

Introduction

- 1) The Petitioner had instituted this action against the District Judge of Kesbawa and the 2nd, 3rd and 4th Respondents and the Attorney General and sought the reliefs prayed for in the prayer of the petition dated 21st November and undated year.
- 2) The said reliefs are as follows;
 - a) Grant a Writ of Certiorari dismissing the order delivered for M/1192/20 on 2021/07/12 by the 1st Respondent, the District Judge, District Court of Kesbawa.
 - b) Grant an interim injunction in favour of the Petitioner dismissing the order delivered for M/1192/20 on 2021/07/12 by the 1st Respondent, the District Judge, District Court of Kesbawa.

- c)** Grant a Writ of Prohibition prohibiting further initial hearing of the case M/1192/20 by the District Judge, District Court of Kesbawa.
- d)** Grant an interim order restraining the District Judge, District Court of Kesbawa from hearing the case M/1192/20 until the final determination of this matter.

Facts of the Petitioner's Case

- 3) The Petitioner has submitted a petition with 54 paragraphs running into 73 pages. On perusal of paragraphs 1 to 53, the Petitioner's contention is that the District Judge had not given a hearing to the Petitioner and had violated the Principles of Natural Justice.
- 4) Therefore, the said District Judge serving as a District Judge will cause severe damage to the parties who are seeking justice before him.
- 5) Further, he had stated that even being an Attorney-at-Law his case had been heard unlawfully, if in the event an ordinary citizen had appeared, the injustice caused would be irreparable.
- 6) In addition, the complaints made by the Petitioner in respect of the prayers sought in the case is that the District Judge has decided the order in favour of the Defendants in case No: N/1192/20 of the District Court of Kesbawa to be quashed and invalidated and to issue an interim order against the said District Judge not to hear the aforesaid case.
- 7) When referring to the paragraphs 4 to 9 of the petition, the Petitioner's complaint was that the District Judge has given a 59 day gap to show cause for not issuing interim orders against the Defendants and had not considered the request and objections raised by the Petitioner.
- 8) Furthermore, it was alleged that the District Judge had arbitrarily used his discretion, made favorable arrangements for the Defendants and had not given a fair hearing to the Petitioner.
- 9) The District Judge was biased towards the Defendants and had noted the details incorrectly when delivering the order. Further, he had given several

dates to submit their written submissions which have caused a reasonable suspicion for the Petitioner of the Independence of the Judiciary.

- 10) In the other paragraphs of the said petition, the Petitioner had repeated the same facts. In addition the Petitioner has contended that the Petitioner has drawn the attention of the District Judge towards inconvenience encountered with the court staff. However, the District Judge has failed to consider the request made by the Petitioner.
- 11) It is also contended that when the Petitioner drew the attention of the Court towards the fraudulent documents tendered by the Defendants, the District Judge failed to take any action.
- 12) Although the Defendants have misled the Court, the District Judge has given biased orders in favour of the Defendants.
- 13) On the aforesaid grounds, the Petitioner had sought to issue notice and interim orders against the Respondents.

Disputed Facts

- 14) This case was supported by the Petitioner on 4th December 2023 and sought formal notice against the Respondents. The Counsels appeared for the 2nd and 3rd Respondents and the Deputy Solicitor General appeared for the 5th Respondent objected for issuing notice against the Respondents.
- 15) After hearing the submissions, this case was fixed for the order to be delivered on 12th January 2024.
- 16) In considering the petition, documents and the submissions made by the Counsels to issue notice, the following disputed facts need to be addressed.
 - I. Was case No: M/1192/20 heard before the 1st Respondent?
 - II. If so, was the District Judge biased towards the Defendants without giving a proper hearing to the Plaintiff in that case?

- III. Is there sufficient material to maintain a Writ Application against the 1st Respondent that he was biased towards the Defendant in M/1192/20 and is it a matter to be decided in a different forum?
- IV. Is there sufficient material to prove that the 1st Respondent considered case No: M/1192/20 differently from other cases before him?

I. Was Case No: M/1192/20 heard before the 1st Respondent?

- 17) The aforesaid case had been heard by the 1st Respondent and delivered the order related by the Petitioner.
- 18) Both parties have no dispute that the said matter was heard by the 1st Respondent and the relevant order challenged by the Petitioner was delivered by the 1st Respondent.
- 19) The Petitioner had sought the reliefs prayed for in the prayers **(a)** to **(d)** based on the said order and the way in which the 1st Respondent had conducted himself.

II If so, was the 1st Respondent biased towards the Defendants without giving a proper hearing to the Plaintiff in that case?

- 20) The main contention of the Petitioner is that the 1st Respondent acted bias and favored the Defendants in case No: M/1192/20. To support that the Petitioner had submitted the Documents P1 to P46.
- 21) The main argument raised by the Petitioner in the instant application is that the 1st Respondent had neglected the submissions and the objections raised by the Petitioner in the District Court of Kesbawa and made favourable arrangements for the Defendants.
- 22) Further, the District Judge has given a 59 day gap to show cause for not issuing an interim order and for the other applications made by the Defendants in the aforesaid case.

- 23) In considering the aforesaid facts and perusal of the documents filed by the Petitioner there is no evidence to show that the said dates had been given by the 1st Respondent in favour of the Defendants in case No: M/1192/20.
- 24) Beside these facts, there is no evidence or documents before this Court to satisfy the work load of the District Court of Kesbawa and the context on which the dates are given. To consider this, at least the Roll Book and the Trial and Inquiry Roll should be considered. Without any of those this Court cannot verify on the grounds on which the specific dates had been given to the Petitioner and the Defendants.
- 25) Most often the District Judges grants dates according to their Trial/Inquiry Roll and the Day Book. Therefore, without considering those documents there is no evidence to prove that the 1st Respondent acted favouring the Defendants by granting long dates.
- 26) Although the Petitioner had stated his facts in 54 paragraphs on the petition, most of the facts are repeated more than once.
- 27) With the available documents there is no suspicion that can be drawn that the 1st Respondent acted favourably towards the Defendants.
- 28) Furthermore, the Petitioner had drawn the attention of this Court that even after complaining to the 1st Respondent about the inconvenience which he encountered with the court staff, the 1st Respondent had not taken any consideration of the said complaints.
- 29) It is my considered view, that it is a matter for the 1st Respondent to give oral direction to the staff and there is no sufficient material before this Court that the 1st Respondent had not attended to it.
- 30) Other than this, the Petitioner had contended that the 1st Respondent had considered fraudulent documents tendered by the Defendants in case No: M/1192/20 and the 1st Respondent accepted additional written submissions made by the Defendants.

- 31) It is obvious that the said matters do not come within the purview of this Court or Writ Jurisdiction. If the 1st Respondent had not considered the documents and he was bias towards delivering the order it is up to the Petitioner to go before an appellate forum to correct it and when there is an alternative remedy, the Petitioner cannot seek a Writ Jurisdiction remedy before this Court.
- 32) In the said circumstances, I do not see that the 1st Respondent was bias or had made the relevant order in favour of the Defendants in case No: M/1192/20.

III Is there sufficient material to maintain a Writ Application against the 1st Respondent that he was biased towards the Defendant in M/1192/20 and is it a matter to be decided in a different forum?

- 33) In the instant action, the reliefs sought by the Petitioner is to make null and void the order dated 12th July 2021 delivered by the 1st Respondent in case No: M/1192/20 and to deliver an order in favour of the Petitioner and to restrain the 1st Respondent from hearing the case No: M/1192/20.
- 34) In considering the reliefs sought by the Petitioner, if a Judge had acted with bias or in favour of a particular party there are certain grounds to be considered to issue a restrain order for the said Judge to hear that case.
- 35) As it was decided in ***Daya Wettasinghe V Mala Ranawaka***¹, Wijetunga J had made the following observation in the instant action to consider alleged bias against a Judicial Officer.

“A party seeking to establish bias undertakes a heavy burden of proof. Mere reasonable suspicion is not enough. A Judicial Officer is a person with a legally trained mind and court will, not lightly entertain an allegation of bias. The Petitioner has failed to establish bias”.

¹ [1989] 1 SLR 86.

- 36) In the case of **Abdul Haseeb V Mendi Perera and Others**², GPS De Silva J had decided on a test for disqualifying bias as follows;

“The tests for disqualifying bias are –

(a) The test of real likelihood of bias

(b) The test of reasonable suspicion of bias

On the application of either test, bias on the part of the Judge has not been established...The expression ‘expedient’ in Section 46 means advisable in the interests of justice.”

- 37) Furthermore, in the case of **Kumarasena V Data Management Systems Limited**³ Gunawardene J had decided as follows.

“Re bias it is not only that the Judge should be impartial, he must appear impartial. In considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself but at the impression which would be given to other people. Even if he was as impartial as could be nevertheless if right minded persons would think that in the circumstances there was a real likelihood of bias on his part, then he should not sit. There must appear to be a real likelihood of bias. Surmise or conjecture is not enough. Will responsible people think the Judge favoured one side unfairly?”

- 38) In considering the aforesaid judgements, it is emphasized that the grounds on which the Court has to consider whether a Judge is biased.
- 39) I do not see any grounds supported by the Petitioner come under the purview of the aforesaid judgments.
- 40) Therefore, this Court cannot consider the contention made by the Petitioner that the 1st Respondent has acted with bias and favoured his decision towards the Defendants in case No: M/1192/29.

² [1991] 1 SLR 243.

³ [1987] 2 SLR 190.

IV Is there sufficient material to prove that the 1st Respondent considered case No: M/1192/20 differently from other cases before him?

- 41) There is no material placed before this Court that the 1st Respondent had heard case No: M/1192/20 in a different manner to the other cases before him.
- 42) As there is no iota of evidence or material in considering the aforesaid judgments, I am of the view that the Petitioner has failed to prove that the 1st Respondent had acted bias or favoured the Defendants in case No: M/1192/20.
- 43) In the said circumstances, making allegation against the Judges unnecessarily and trying to tarnish the reputation of the judges should not be considered lightly.
- 44) On the aforesaid grounds, I am of the view that heavy cost should be imposed in the instant matter against the Petitioner for making applications of this nature.

CONCLUSION

- 45) In view of that I dismiss the undated petition of November 2021 subject to payment of cost of Rs. 50 000/- for each Respondent.

Judge of the Court of Appeal

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

I agree

Judge of the Court of Appeal