

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

In the nature of an application in the nature
of a writ of Certiorari, under and in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

CA/WRIT/260/23

Koggala Hewage Thushara Priyanjith
Kusum Seana
Mudugamuwa
Weligam

Petitioner

1. Roshan Ranaginghe
Minister of Sports
Ministry of Youth and Sports
No. 09
Philip Gunawardhana Mawatha
Colombo 07.
2. Kanapathipillai Mahesan
Secretary
Ministry of Youth and Sports
No. 09
Philip Gunawardhana Mawatha
Colombo 07.
3. A. Muthumala
Director General of Sports
Department of Sports Development
Ministry of Youth and Sports
No. 09
Philip Gunawardhana Mawatha
Colombo 07

4. Upali Samaraweera
Member
Independence Election Committee
Ministry of Youth and Sports
No. 09
Philip Gunawardhana Mawatha
Colombo 07
5. I.Palitha Jayathilake
Member
Independence Election Committee
Ministry of Youth and Sports
No. 09
Philip Gunawardhana Mawatha
Colombo 07
6. I.M. Ranasinghe
Member
Independence Election Committee
Ministry of Youth and Sports
No. 09
Philip Gunawardhana Mawatha
Colombo 07
7. Premnath Chaminda Dolawatta
No.50
Ihala Bomiriya
Kaduwa.
8. Wijerathna Arachchilage Saman Pushp
Kumara Medonsa
No. 3
Bandaranayake Mawatha
Asgiriya

Gampaha

9. Udara Sasanla Liyanwela

No. 510/A

Game Road

Ragama

10. Lakshan Wasantha Kumara Kaluarachchi

No. 3

Light House Street

Kotuwa

Galle

11. Attorney general

Attorney General's Department

Colombo 12.

Respondents

Before : N. Bandula Karunarathna, P/CA, J.

B. Sasi Mahendran, J.

Counsel: Niranjan De Silva for the Petitioner

Viveka Siriwardena, ASG for the 1st- 6th and 11th Respondents

Eraj de Silva with Daminda Vijerathne for the 7th Respondent

Written

Submissions: 04.07.2024 and 18.07.2024 (by the Petitioner)

On 03.07.2024 (by the 1st to 6th and 11th Respondents)

12.07.2024 (by the 7th Respondent)

Judgment On: 24.09.2024

B. Sasi Mahendran, J.

The Petitioner has instituted this action to obtain the following reliefs prayed for in the Petition dated 17.05.2023

- a. issue Notice on the Respondents; e) b)
- b. Grant a Writ of Certiorari quashing the 7th Respondent's nomination for the election of the officials of the National Gymnastic Association of Sri Lanka;
- c. Grant a Writ of Certiorari quashing the decision of the 1st Respondent encapsulated in correspondence bearing No. MOSYA/MIN/SH-11 dated 27.04.2023;
- d. Grant a Writ of Certiorari quashing Gazettes Extraordinary bearing Nos. 2310/26, 2310/27 and 2310/28 dated 14.12.2022 or parts thereof and/or any actions taken by or in terms of them;
- e. Grant a Writ of Certiorari quashing Gazettes Extraordinary bearing Nos. 2310/26, 2310/27 and 2310/28 dated 14.12.2022 or parts thereof and/or any actions taken by or in terms of them in respect of the National Gymnastic Association of Sri Lanka and/or the Petitioner;
- f. Grant and issue an Order/Interim Order that the correspondence bearing No. MOSYA/MIN/SH-11 dated 27.04.2023 be produced to the Petitioner and/or Your Lordships' Court;
- g. Grant and issue an Interim Order to the effect that the 7th Respondent's nomination cannot be maintained and hence, the 7 Respondent cannot stand for election of the officials of the National Gymnastic Association of Sri Lanka;
- h. Grant and Issue an Interim Order suspending the operation and the effects of the decision of the 1 Respondent as encapsulated in correspondence bearing No. MOSYA/MIN/SH-11 dated 27.04.2023;

- i. Grant and issue an Interim Order staying the application of Gazettes Extraordinary bearing Nos. 2310/26, 2310/27 and 2310/28 dated 14.12.2022 and/or parts thereof and/or any actions taken by or in terms of them in respect of the National Gymnastic association of Sri Lanka and/or the Petitioner;
- j. Grant and issue an Interim Order staying the application of Gazettes Extraordinary bearing Nos. 2310/26, 2310/27 and 2310/28 dated 14.12.2022 and/or parts thereof and/or any actions taken by or in terms of them;
- k. Grant costs;
- l. and Grant such other further reliefs that Your Lordships' Court shall seem meet.

When the matter came up on 21.05.2024, the Counsel for the Respondents has taken the preliminary objections with regard to the maintainability of this action. Accordingly, all parties have filed written submissions. The Counsel for the 7th Respondent has informed the following facts to the Courts in their written submission:

The Petitioner has filed this application challenging the elections of the National Gymnastic Association which has already been held on 29.05.2023. After the said election, the 7th Respondent has won the election along with some other members who are not made a party to this action. Further, he brought to notice that, the Gazettes that are purportedly challenged by the Petitioner namely, 2310/26, 2310/27 and 2310/28 all dated 14.12.2022 have now been replaced by a subsequent Gazette bearing No. 2382/32 issued on 03.05.2024 which was marked as A.

The said Gazette in Part (V) has mentioned that these Gazettes have been rescinded. However, the Petitioner moved to quash the said Gazettes which are not in force now. Thus, the reliefs sought by the Petitioner to quash the said Gazettes are rendered futile.

Although the Petitioner admitted that the said Gazettes are not in force, the Petitioner seeks to quash any action taken under and in terms of the said Gazettes.

Objection was raised regarding the 7th Respondent's nomination for the said election by Matara District Gymnastic Association where the Petitioner is the Secretary. The independent Election Committee had examined the objection with regard to the nomination in terms of Gazette No. 2215/47. Later, the Petitioner came to know that, despite the rejection of the 7th Respondent's nomination, the 1st Respondent recommended the said nomination to the Independent Election Committee bearing No. MOSYA/MIN/SH-11.

In the instant application, the Petitioner moves to quash the decision of the 1st Respondent encapsulated in correspondence bearing No. MOSYA/MIN/SH-11 dated 27.04.2023 on the basis that the said recommendation is of ultra vires. However, the said correspondence is not before this Court.

The impact of not producing such decision before the Court is considered by his Lordship Janak de Silva J in *Finest Tea Exports (Private) Limited and Another v. Chulananda Perera and Others*, CA WRTIT Application No. 209/2017, Decided on 04.10.2019, that;

“The Petitioners also seek a writ of certiorari quashing the decision of the 3rd to 6th Respondents and/or anyone or more of them not to permit the Petitioners to upgrade the whole quantity of tea contained in the said consignments. However, there is no such decision before Court. In *Weerasooriya v. The Chairman, National Housing Development Authority and Others* [CA. Application No. 866/98, C.A.M. 08.03.2004] Sripavan J. (as he was then) held that the court will not set aside a document unless it is specifically pleaded and identified in express language in the prayer to the petition.”

Further, the main relief prayed by the Petitioner is to quash the decision of the Independent Election Committee allowing the 7th Respondent to participate in the election.

One of the objections taken by the Respondent is that, under the Gazette bearing No. 2085/56 dated 22.09.2018 which was marked as 7R-1(3), there is a provision available for the Petitioner to appeal the decision of the Independent Election Committee which reads as follows:

“(h) Any person dissatisfied with any decision of the Election Committee shall appeal within one week to the Minister in charge of the subject of Sports, as per Regulation 8(1).”

The said Gazette was later amended by the Gazette bearing No. 2207/7 dated 23.12.2020 which was marked as 7R-1(6). Accordingly, there is a procedure set out with regard to appeal.

“(2) Upon receipt of an appeal, the Minister may refer such appeal to the Appeal advisory committee referred to in sub-regulation (3) of the regulation.

(3) (a) The Minister may establish an Appeal Advisory Committee consisting of seven members to consider the appeal and to make recommendations thereon to him. The Minister shall not be bound to by any of the recommendations given by the members of such Committee.

(b) The Appeal Advisory Committee (hereinafter referred to as the "Committee") shall consist of a panel of retired Judge of the Supreme Court of Sri Lanka, persons who have wide knowledge and experience in the field of law and person who have contributed for the development of the sports of Sri Lanka.

(c) The retired Judge of the Supreme Court of Sri Lanka shall be the Chairman of the committee and in the absence of the Chairman, the members shall elect a member to preside at the meeting.

(d) Where the Minister refers an appeal to the Committee, the Chairman shall appoint at least three members, from among the members of the committee, to consider and make recommendations on such appeal to the Minister within fourteen days from the date of reference of the appeal.

(4) The Minister shall, on consideration of all relevant facts on the appeal inform his decision with the reason therefore to the appellant and the relevant National Sports Association within one month of the receipt of such appeal.”

It is clear that, the Petitioner was provided with a comprehensive alternative remedy by the aforesaid Sports Regulations. But the Petitioner has not availed himself of this remedy.

In Tennakoon v. Director-General of Customs and Another (2004) 1 SLR 53 at page 56, his Lordship Wijayaratne, J. held that:

“The petitioner in this application seeks to challenge the forfeiture made under section 119 of the Customs Ordinance by a writ application when in fact the Customs Ordinance itself provides for such a course of action under section 154. The petitioner is not therefore without an alternative suitable remedy. The petitioner is not entitled to seek the writ jurisdiction of this court when there is an alternative remedy available to him. In the Sarvodaya case(1) it was held “Ordinarily the only remedy available to the petitioner for claiming the said goods is to institute proceedings in terms of section 154, challenging the validity of the seizures”

In Rev. Maussagolle Dharmarakkitha Thero And Another Vs. Registrar Of Lands And Others (2005) 3 SLR 11, His Lordship Sisira De Abrew J held that;

“The Petitioners had a right of appeal against the decision of the 1st Respondent contained in PS. This right has been given to them under section 3S(1) of the said Ordinance. The learned Counsel for the Petitioners contended that the Petitioners were unaware of the decision made by the 1st Respondent refusing to register the deed P4. The Commissioner of Buddhist Affairs, by his letter dated 16.06.1995 marked P7, informed the 3rd Respondent a copy of which was sent to the 1st Petitioner that transfer of property by deed No. 3062 (P4) could not be approved since the property was Sangika property. The petitioners, in their petition have admitted this position. Therefore it is safe to conclude that the 1st petitioner was aware of the decision of the Commissioner of Buddhist Affairs who is the 2nd respondent. Then it was within the knowledge of the 1st Petitioner that the 1st Respondent was going to refuse the registration of deed P4. For these reasons, I am unable to agree with the above contention of the learned Counsel for the Petitioners.

In view of the above facts it is clear that the Petitioners have not used the right of appeal given to them under section 3S (1) of the said Ordinance. The Petitioners have, therefore, not used the alternative remedy available to them.”

In the instant case, the Petitioner has failed to make an appeal to the relevant authority. We hold that, failure to proceed with the appeal in terms of the said regulation is fatal.

For the above-said reasons, we uphold the preliminary objections taken by the Respondents and dismiss the application with costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.

I AGREE

PRESIDENT OF THE COURT OF APPEAL