

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

*In the matter of an application for mandate in
the nature of Quo Warranto and a writ of
Mandamus under and in terms of Article 140 of
the Constitution.*

CA/WRIT/180/2021

M. M. M. Imitiyaz
No. 110/6/2/1,
Abeysekara Road,
Mount Lavinia.

Petitioner

Vs.

1. Anthony Sriyalatha
No. 779/2/C,
Millagahawaththa Road,
Thalangama North,
Malabe.
2. National Water Supply and Drainage
Board
Galle Road,
Rathmalana.
3. Nishantha Ranathunga
Chairman,
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

4. Nimal Ranawaka
Vice Chairman,
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

4A. Mr. W. M. S. B. Wijekoon
Vice Chairman,
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

5. Thilina Wijethunga
General Manager,
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

6. G. K. Iddamalgoda
Additional General Manager (Human
Resources),
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

7. R. M. A. S. Weerasena
Additional General Manager (Finance),
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

8. N. Y. S. Abegunawardane
Deputy General Manager (Industrial
Relations),
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

9. Dr. L. T. Gamlath
Director,
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

9A. Mr. T. M. R. P. Tennakoon
Director,
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

10. A. R. Wickremasinghe
Director,
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

11. R. A. S. L. Ranasinghe
Director,
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

12. T. M. R. P. Thennakoon
Director,
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

13. B. N. Daminda Kumara
Director,
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

13A. Ms. Nayana Nathavitharana
Director,
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

14. W. M. R. P. Weerasinghe
Observer,
National Water Supply and Drainage
Board, Galle Road,
Rathmalana.

15. W.P.C. Wickramaratne
Auditor General,
National Audit Office,
No. 306/72,
Polduwa Road,
Baththaramulla.

16. G. H. D. Dharmapala
Deputy Auditor General,
National Audit Office,
No. 306/72,
Polduwa Road,
Baththaramulla.

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Rasika Dissanayake with Thusitha Wijekone for the Petitioner.

Amasara Gajadeera, SC for the Respondents.

Supported on : 27.09.2022

Decided on : 15.12.2022

Sobhitha Rajakaruna J.

The Petitioner in this Application seeks for a writ of Quo Warranto challenging the appointment of the 1st Respondent as an employee of the 2nd Respondent National Water Supply and Drainage Board ('NWSDB') and also to declare that the 1st Respondent has no authority to hold any office and/or office of Deputy General Manager (Internal Audit) (Acting) of the NWSDB. Additionally, the Petitioner is seeking for a writ of Mandamus compelling the 2nd to 14th Respondents to recover, inter alia, all remunerations and allowances paid to the 1st Respondent.

The Petitioner alleges that the appointment of the 1st Respondent to the post of Accounts/Audit clerk of the NWSDB in the year 1995 is illegal and unlawful. Referring to the scheme of recruitment marked as 'X33', the Petitioner asserts that the 1st Respondent has not satisfied the required qualifications to be recruited to the said post. Even the

promotion of the 1st Respondent to the post of Accountant and appointment to the post of Deputy General Manager is being challenged by the Petitioner. The Petitioner further complains that the 1st Respondent, after his appointment in 1996 to the post of Accounts/Audit clerk and during the period on probation, had been registered as an internal student of the University of Sri Jayawaradanepura. Another allegation levelled against the 1st Respondent by the Petitioner is upon a purported misuse of a vehicle belonging to the NWSDB.

The impugned appointments have been made in the year 2019 or before that. But it is noted that the Petitioner has filed this application only on 26.03.2021. The Petitioner has not justified his delay in applying to this Court. Although, there are grounds to refuse this Application on laches on the part of the Petitioner, I must, based on the circumstances of this case consider whether a writ of Quo Warranto can be issued on the above grounds alleged by the Petitioner and also whether such grounds warrant this Court to issue a writ of Quo Warranto as prayed for by the Petitioner. It is significant that a contract of employment has been entered into between the Petitioner and the NWSDB after the impugned appointments were made effective.

When examining the above issues, it is important to analyze the fundamental principles governing the writ of Quo Warranto which is a discretionary relief. Quo Warranto is a remedy available to call upon a person who is holding a public office to show the authority under which he claims to hold the office. (See- *Geetha Samanmali Kumarasinghe and others vs. M. N. Ranasinghe Controlller General of Immigration and Emigration, SC/Appeal/99/2017 decided on 02.11.2017*). If the office in question is a 'public office' the applicant for the Quo Warranto must establish that the election/appointment of the defacto holder of the post is a nullity. (Vide-*Principles of Administrative Law in Sri Lanka*" by Sunil F A Cooray at page 445)

As per *Ram Singh Saini vs. H. N. Bhargava AIR 1975 SC 1852: 1975 (2) LLJ 359: (1975) 4 SCC 676; Arun Kumar vs. UOI, AIR 1982 Raj 67*, a Quo Warranto is available against the holder of any public office of a substantive character whether he holds it by nomination, election or by appointment. 'Nomination by the Governor of a State of members in the State Legislative Council, appointment of a Chief Minister in a State, or the Advocate-

General in a State,¹ nominations or elections to municipal bodies, inter alia, have been challenged by way of petitions for quo warranto'. (See-*Jogendra Nath vs. State of Assam AIR 1982 Gau 25*²).

M. P. Jain & S. M. Jain in '*Principles of Administrative Law*' (9th Edition) 2022 describes the necessary ingredients that need to be fulfilled for the issuance of Quo Warranto as;

- a) the office in question must be a public office;
- b) the office has been created by law; and
- c) the person is not legally qualified to hold the said office.

The origins of the concept of writ jurisdiction including the writ of Quo Warranto can be found in early English law. The following passage of '*Administrative Law*' by H. W. R. Wade and C. F. Forsyth (6th Edition) 1988 Oxford at p. 591-592, illustrates the present state of the remedy by way of a writ of Quo Warranto especially in England and Wales;

"Since 1938 the injunction has been made available by statute to prohibit the usurpation of a public office, in place of the of the former proceedings known as quo warranto. Quo Warranto was originally a prerogative writ which the Crown could use to inquire into the title to any office or franchise claimed by a subject. It fell out of use in the sixteenth century and was replaced by the information in the nature of quo warranto, which in form was a criminal proceeding instituted in the name of the Crown by the Attorney General or by a private prosecutor.³ These information were abolished by the Administration of Justice (Miscellaneous Provisions) Act 1938⁴ (now replaced by the Supreme Court Act 1981⁵) which provided that where any person acts in an office to which he is not entitled and an information would previously have lain against him, the High Court may restrain him by injunction and may declare the office to be vacant if need be; and that no such proceedings shall be taken by a person who would not previously have been entitled to apply for an information. Consequently the old law of quo warranto is still operative, but the remedy is now by

¹ Karkare vs. Shevde. AIR 1952 Nag 330

² Purshottam Lal vs. State of Rajasthan AIR 1979 Raj 23; Har Sharan vs. Chandra Bhan AIR 1962 All 301; M. P. Sharma vs. Prafulla Ghash 72 CWN 328 (1968); Maseh Ullah vs. Abdul Rehman AIR 1953 All 193; Karkare vs. Shevde AIR 1952 Nag 330; Puranlal vs. P. C. Ghosh AIR 1970 Cal 118; Rajendra Singh vs. Shejwalker AIR 1971 MP 248 (Also see-'Principles of Administrative Law' by M. P. Jain & S. M. Jain, 9th Edition, 2022, at p. 2429)

³ *Bl. Comm. Iii. 263*

⁴ *S. 9*

⁵ *S. 30*

injunction and declaration. The procedure is similar to that for prerogative remedies and must now be by 'application for judicial review'.⁶ But there seems to be no record of its having been used."

Thus, it can be assumed that remedies by way of a writ of Quo Warranto or orders in nature of Quo Warranto are obsolete or have been abolished to a greater extent in England and Wales. However, after wide reading of the relevant legal literature, I observe that the remedies by way of Quo Warranto remains in use in the jurisdictions of United States, Philippines and India etc. Some jurisdictions such as in Australia has enacted Judicial Review Statutes and accordingly, the prerogative writ of Quo Warranto has apparently been abolished.

On perusal of judgements issued in respect of the writ of Quo Warranto by several jurisdictions, it implies that the scope of the said prerogative writ has been either restricted by way of subsequent statutes or slightly expanded to an extent even beyond the scope adopted by early English Courts. Although, the Courts by which the writ of Quo Warranto was originated tend to desert such discretionary remedy, the Sri Lankan Constitution in its Article 140 has bestowed power on the Court of Appeal to issue orders in the nature of Quo Warranto. In light of such circumstances, it is important to examine the trend in judicial pronouncements of Sri Lankan Courts in applications for writ of Quo Warranto.

I must now advert to consider the nature of the applications filed in Review Court in Sri Lanka seeking for writs of Quo Warranto. Among many such applications starting from early 19th century, it is apparent that our Courts have entertained or rejected applications for writ of Quo Warranto filed mainly in reference to election to a public post or office but, not for appointments made to various posts subject to a scheme of recruitment or a contract of employment etc.

In *Wadugodapitiya vs. Ismail* 45 NLR 304, the Petitioner claims that the respondent was not entitled de jure to the office of Municipal member after the election held on 11.12.1943. *Givendrasingha vs. R. F. S. De Mel* 49 NLR 422 is an Application for a writ of Quo Warranto against the elected Mayor of Colombo Municipal Council. *K. P. Perera vs. H. Wickramatunga* 69 NLR 176 has been filed against the respondent who was elected as a

⁶ Supreme Court Act 1981, s. 31; see below p. 671. The pre-1938 practice, as with the prerogative remedies, was to obtain a rule nisi for the information.

member of the Colombo Municipal Council on 18.12.1965. The petitioners in *A. H. M. Razeem vs. A. M. Nazeer* 70 NLR 271, *N. Anthonipillai vs. A. G. Rajasooriar* 74 NLR 172 and *P. L. E. Alwis vs. W. M. P. B. Unnatenne* 76 NLR 180 have applied for a writ of Quo Warranto on the ground that the respective respondents who were elected to the Municipal Council were disqualified under the provisions of the Local Authorities Elections Ordinance.

The cases of *Simeon Fernando vs. Goonesekera* 47 NLR 512 and *G. M. Herath Banda vs. P. S. Dissanayake* 64 NLR 303 were to challenge the election of a member of a Village Committee by way of a writ of Quo Warranto. *W. A. Sundara Banda vs. A. G. D. D. Pathirana* 73 NLR 100 deals with the qualification for membership of a Village Council held under Local Authorities Elections Ordinance.

In *P. Weerasingham vs. K. Kasithamby and another* 64 NLR 502, the petitioner questions the validity of the election of the chairman of the Town Council. The case of *O. T. De Silva Vs. K. S. De Silva* 53 NLR 343 refers to an election to the office of Member of Ward No.1 of Hatton-Dickoya Urban Council under the provisions of Local Authorities Elections Ordinance No. 53 of 1946.

The petitioners in *M. D. Chandrasena and two others vs. S. F. De Silva* 63 NLR 308 allege that the Respondent, who was the Director of Education, has unlawfully usurped the office of Manager of the relevant Schools and the Court held that a writ of Quo Warranto does not lie against a person usurping an office which is not of a public nature.

In *D. Siriwardena vs. D. W. Fernando* 77 NLR 469, the Court observed that the Assistant Commissioner of Co-operative Development who was empowered under the by-law to appoint persons to perform the duties and functions of the Executive Committee of the Co-operative Society had also the power to dismiss such persons by reason of the said by-law read together with provisions of Section 14 (f) of the Interpretation Ordinance and was not obliged to observe the rules of natural justice and in particular the rule of 'audi alteram partem'. Further, it was held;

“...the test therefore to be applied whether a writ is available is whether there has been a usurpation of an office of a public nature and an office substantive in character, that is, an office independent in title and not merely the function or

employment of a deputy or a servant held at the will and pleasure of others. These same requirements have been adopted by this Court by Poyser, S.P.J., in *Deen vs. Rajakulendren* 40 NLR 25”.

The Petitioner of the recent case of *Dilan Perera vs. Rajitha Senaratne* (2000) 2 Sri. L.R. 79, who was a Member of Parliament, complained that the 1st Respondent who was also a Member of Parliament nominated from the National List, had entered into various contracts with Government institutions - as a partner and a Director to supply Dental Equipment and therefore was disqualified under Article 91(1)(e) of the Constitution, and accordingly, a writ of Quo Warranto has been issued as prayed for by the petitioner, declaring the appointment of the 1st respondent as a Member of Parliament void.

The case of *Bandaranaike vs. De Alwis and others* (1982) 2 Sri. L.R. 664 was filed in the Court of Appeal against three respondents who were the Commissioners of a Special Presidential Commission of Inquiry. The petitioner applied for a Writ of Quo Warranto and a Writ of Prohibition against the 1st respondent and no relief was claimed against the other two Respondents. A question arose in the said case as to whether a Quo Warranto could be issued restraining a Commissioner from participating in further proceedings of the Special Presidential Commission as such would virtually amount to a removal of the Commissioner. The Court has observed that the power of removal is an exclusive power vested exclusively in the President.

In the case of *Seemitha Athugalpura Pudgalika Bus Sangamaya and another vs. North Western Provincial Council Road Passenger Transport Authority and others* (2005) 1 Sri L. R. 42, the Petitioner sought a writ of Quo Warranto on the 2nd respondent-Assistant Director (Operations) alleging that he lacked the basic qualifications necessary to lawfully hold the said office. When arriving at the final decision in this case, the Court has followed the principles enunciated in *D. Siriwardena vs. D. W. Fernando* 77 NLR 469.

The case *Geetha Samanmali Kumarasinghe and others vs. M. N. Ranasinghe Controlller General of Immigration and Emigration, SC/Appeal/99/2017 decided on 02.11.2017* is an appeal against the Court of Appeal judgment dated 03.05.2017, where a writ of Quo Warranto was issued declaring that the 1st Respondent-Appellant was disqualified to be a Member of Parliament and that she was not entitled to hold the office of Member of

Parliament. The Supreme Court affirmed the judgement of the Court of Appeal and dismissed the case.

The above line of Sri Lankan cases set forth the jurisprudence pertaining to the writs of Quo Warranto. In my view, the jurisprudence of our Courts to which we must look for guidance to resolve the issues of the instant Application has taken a pragmatic approach. Accordingly, the writ of Quo Warranto lies on usurping of an election or an appointment of a person to a public office where such election or appointment is made by a person or persons who exercised a legal mandate based on his or their choice to elect or appoint such person. The said criteria should exist in addition to the other fundamental requirements [(a)the office in question must be a public office (b)the office has been created by law and (c)the person is not legally qualified to hold the said office] for issuance of a writ of Quo Warranto as discussed earlier. I strongly believe that this should be the current law in reference to issuing of writs of Quo Warranto.

When an appointment is made according to a scheme of recruitment like in this Application the factors such as mandate or the choice would not arise. The Court needs to have a strong and discretionary jurisdiction such as the power to grant writs of Quo Warranto, if it wants to interfere with the cases associated with such election. That may be the reason the power to issue writs of Quo Warranto is also embodied in the above-mentioned Article 140 of the Constitution. Hence, the remedy for erroneous appointments made after an interview etc. and/or on a contract of service cannot be subjected to the relief by way of a writ of Quo Warranto or by way of an order in the nature of Quo Warranto. In such instances the remedy seems to be a writ of Certiorari or Prohibition or any other statutory remedy.

The precedent laid down in *Deen vs. Rajakulendram* 40 NLR 25 is very much germane to my above point of view. The Court in that case referring to an extract from an opinion delivered by Tindal C. J., in the House of Lords in *Darley v. The Queen* ((12 C. L. & F. R. 537), which was quoted with approval by Lord Reading in the case of *Rex v. Speyer and Rex v. Cassel* ((1916) 1 K. B. D. 595) observed;

‘The writ of quo warranto will only lie “for usurping any office, whether created by Charter alone, or by the Crown, with the consent of Parliament, provided the office is of a public nature, and a substantive office, not merely the function or

employment of a deputy or servant held at the will and pleasure of others.” Lord Reading, further in the course of his judgment, laid down that “the test to be applied is whether there has been usurpation of an office of a public nature and an office substantive in character, that is. an office independent in title”.’

The pre-eminence in the above judgement is incorporated in its passage below;

“An application for a writ of quo warranto will lie for usurpation of an office of a public nature and a substantive office and not merely the function or employment of a deputy or servant held at the will and pleasure of others. A writ will not lie in respect of an appointment of a Revenue and Works Inspector made by an Urban District Council under section 47 of the Local Government Ordinance.”

For the reasons set out above, I see no necessity for me to analyze the availability of other fundamental requirements that needs to be fulfilled when applying for a writ of Quo Warranto and also the issues relating to the relief for a writ of Mandamus. The Petitioner has totally misdirected himself by selecting the remedy of writ of Quo Warranto to circumvent the purported allegations against the 1st Respondent. In the circumstances, I proceed to refuse this application on the grounds that the Petitioner has failed to submit an arguable or a prima facie case warranting this Court to issue formal notice of this application on the Respondents.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal