

**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 Writ of
Mandamus under and in terms of Article
140 of the Constitution of The
Democratic Socialist Republic of Sri
Lanka**

Dr. Shyamal Buddjima Jayasinghe
1082/11,
Aritigala Mawatha,
Rajagiriya.

Petitioner

CA (WRIT) 408/2015

Vs,

1. Anura Jayawickrama.
Secretary
Ministry of Health
Suwasiripaya
385, Baddegama Wimalawansa Mawatha
Colombo 10
2. Dr.P.G.Mahiepala,
Director of General Of Health Services
Department of Health Services
Suwasiripaya
385, Baddegama Wimalawansa Mawatha
Colombo 10
3. Dr. Lakshmi Somatunge
Deputy Director of General Of Health
Services (Medical Services)
Department of Health Services
Suwasiripaya
385, Baddegama Wimalawansa Mawatha
Colombo 10.

4. Dr. S. Dolamulla
Director Tertiary Care Services
Department of Health Services
Suwasiripaya
385, Baddegama Wimalawansa Mawatha
Colombo 10.
5. Hon. Attorney General
Attorney General's Department
Colombo 12

Respondents

AND NOW BETWEEN

1. Sri Lanka College of Paediatricians
No. 44/1, Gnanartha Pradeepa Mawatha,
Colombo 08.
2. Dr. Ramya De Silva,
No. 44/1, Gnanartha Pradeepa Mawatha,
Colombo 08.

Intervenient - Petitioners

Vs

Dr. Shyamal Buddjima Jayasinghe
1082/11, Aritigala Mawatha,
Rajagiriya.

Petitioner- Respondent

1. Anura Jayawickrama.
Secretary
Ministry of Health
Suwasiripaya
385, Baddegama Wimalawansa Mawatha
Colombo 10
2. Dr.P.G.Mahiepala,
Director of General Of Health Services
Department of Health Services
Suwasiripaya
385, Baddegama Wimalawansa Mawatha
Colombo 10

3. Dr. Lakshmi Somatunge
Deputy Director of General Of Health
Services (Medical Services)
Department of Health Services
Suwasiripaya
385, Baddegama Wimalawansa Mawatha
Colombo 10.
4. Dr. S. Dolamulla
Director Tertiary Care Services
Department of Health Services
Suwasiripaya
385, Baddegama Wimalawansa Mawatha
Colombo 10.
5. Hon. Attorney General
Attorney General's Department
Colombo 12

Respondent-Respondents

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

Counsel : Romesh de Silva PC with Sugath Caldera for the Petitioner - Respondent
Pasindu Silva with J.C Weliamuna for the Interveniend - Petitioners
Janaka de Silva, DSG for the Attorney General

Order on : 11.01.2017

Order
S.Thurairaja PC. J

Order regarding the application for intervention

For the purpose of easy reference the petitioner and the respondents in the original application is referred to as the petitioner and respondent respectively. The applicants of the intervenient application will be referred as the intervening parties.

The petition of the petitioner in the original application reveals that he is a Consultant Neonatologist attached to Castle Street Hospital for women; Colombo sought Writ of Certiorari and Mandamus against the Ministry of Health and other respondents regarding the filing of the post of consultant.

The intervening parties namely Sri Lanka College of Paediatrician and Dr.Ramya de Silva submitted a petition to intervene on the basis that they are vitally concerned in the main issue; hence they have locus standi to intervene.

It is noted that the original application was supported and notice was issued on the 21st October 2015. The intervening parties filed the application on the 3rd of June 2016.

The original petitioners vehemently objected the intervention of the intervening parties, respondents had not submitted any consent nor objections to the intervention.

Considering the submission made by both parties I consider that there are two schools of thought prevailed till recent in the issue of allowing an intervention.

Liberal approach as adopted in **Janka Lakshman Pallawela V Dr. Ajith U. Mendis C.A 453/2007 (writ) C.A Minute dated 21.03.2013** says

"Each of the intervenient petitioners in the present case cannot be said to be a meddlesome busybody or a meddlesome interloper who do not have a sufficient interest in the pending application. I would therefore adopt the liberalized rules in regard to the standing of a party entitled to seek a remedy to the case of an intervenient who similarly has a sufficient interest in the subject matter of a pending writ application, and on this basis permit intervention." [Emphasis added]

The other is the Rapid approach which was followed in many cases. In the case of **Weerakoon V Bandaragama Pradeshiya Sabawa 2012 (B.L.R) 310** a divisional bench was specially constituted for the purpose of *"the question before this court is whether the intervenient petitioner is entitled to make this application for intervention in the absence of any provisions in the rules of this court enabling a party to intervene in writ application."* [Emphasis added]

It was held by the Divisional Bench as follows:

".... In this Context, it is pertinent to note that the Court of Appeal (Appellate Procedure) Rules 1990, made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka setting out the procedure to be followed by this court in dealing with applications inter alia for prerogative writs, do not provide for third party interventions in these proceedings ..." [Emphasis added]

Considering series of judgments I am of the view that the approach of the Court is now crystallized to follow the view expressed by the divisional bench in **Weerakoon V Bandaragama Pradeshiya Sabawa 2012 (B.L.R) 310**.

Regarding the Liberal view I make special reference to the observation of Thambiah J. in **M.D.Chandrasenav V S.P. De Silva 63 NLR 143** in which he expressed the following

“for the additional reason that the recognition of such a principle would open the floodgates, as it were, to a torrent of similar applications, and thus impede the functioning of the courts.” [Emphasis added]

After carefully considering the submissions of both parties, previous judgments, rules and jurists opinion I am of the view that the intervention is not provided hence, the application for the intervention is disallowed.

Application for the intervention is disallowed.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J (P/CA)

I agree,

PRESIDENT OF THE COURT OF APPEAL