

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

*In the matter of an application for
mandates in the nature of Writs of
Certiorari in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

C A (Writ) Application

No. 312 / 2014

Wickrama Arachchige Lalith Kumara

No. 291/2A,

Pelaketiya Watta,

Wakwella Road,

Galle.

PETITIONER

-Vs-

1. H D Ratnayake,
Director General,

Department of Wildlife Conservation,
No. 811/A,
Jayanthipura Road,
Battaramulla.

2. Udeni Wickremasinghe,
Secretary,
Ministry of Wildlife Resources
Conservation,
No. 811/A,
Jayanthipura Road,
Battaramulla.

RESPONDENTS

Before: P. Padman Surasena J (P/C A)

A L Shiran Gooneratne J

Counsel: Chathura Galhena with Manoja Gunawardana for the Petitioner.

Chaya Sri Nammuni SC for Respondents.

Argued on: 2018 - 05 - 03

Decided on: 2018 - 07 - 25

ORDER

P Padman Surasena J

The Petitioner who is a Public Servant has sought in this application a writ of Certiorari to quash a transfer order made by the 1st Respondent on 2014-08-15 produced marked **P 5**.

However, the document produced by the 1st Respondent marked **R 8** shows clearly that the Public Service Commission has approved the transfer under challenge. This has been done on 2014-10-09. It is to be noted that the Petitioner has been transferred on disciplinary grounds.

When this case was taken up for argument, the learned State Counsel appearing for the Respondents raised a preliminary objection to the maintainability of this case.

It is the position of the Respondents that this application cannot be maintained in view of Article 61 A of the Constitution. The said Article is as follows,

"..... subject to the provisions of paragraph (1), (2), (3), (4) and (5) of Article 126, no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, a committee, or any public officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or public officer, under this chapter or under any other law....."

The judgments, namely

- i. Katugampola Vs. Commissioner General of Exercise and others (2003(3) S L R 207) which was decided in 2003,
- ii. Rathnasiri and others Vs. Ellawala and others (2004 (2) S LR 180) which was decided in 2004 and
- iii. Dissanayake Vs. Salahudeen and others. C A 250/ 2013 and 251/ 2013 (decided on 2014-02-12) which was decided in 2014

show that this Court has consistently held that the provisions in Article 61 A ousts the writ jurisdiction of this Court and grants exclusive jurisdiction to the Supreme Court to hear and determine all such matters coming under the scope and ambit of that Article.

This court in all the above cases without any hesitation has upheld the preliminary objection raised on behalf of the Respondents in those cases that the ouster clause in Article 61 A would, be a bar to entertain those writ applications. The preliminary objection taken up on behalf of the Respondents in this case is also the same.

The Petitioner has chosen to challenge the impugned transfer before the Public Service Commission could approve it without making the Public Service Commission a party to the instant application. There is a general rule in the construction of statutes that what a court or a person is prohibited from doing directly, cannot be done indirectly or in a circuitous manner.¹ Therefore, this Court is of the view that the Public Service Commission is a necessary party to this case and that the mere fact that the Petitioner had chosen to challenge the transfer before the Public Service Commission could approve it does not relieve the Petitioner's legal obligation to ensure that all necessary parties are made respondents to his application. This Court observes that the Petitioner has not even made any

¹ Bandaranayake Vs. Weeraratne & others 1981 (1) SLR 10 at 16.

subsequent attempt to bring Public Service Commission as a respondent to this case. He is still contended without it.

For the foregoing reasons, this Court is of the view that the Petitioner has failed to counter the preliminary objection raised by the learned State Counsel before this Court in the instant case.

We see no reason to deviate from that line of judgments. We therefore uphold the preliminary objection raised by the learned State Counsel on behalf of the Respondents and proceed to dismiss this application in limine.

Application dismissed in limine.

PRESIDENT OF THE COURT OF APPEAL

A L Shiran Gooneratne J

I agree,

JUDGE OF THE COURT OF APPEAL