

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

C A (Writ) Application No. 526/ 2015

1. Lakshmi Mignone E. Perera,
No. 406,
Horana Road,
Alubomulla,
Panadura.

2. Sandya Rohini Malkanthi Perera,
No. 222 / 5,

Ranmuthu Place,
Ihalakaragahamuna,
Kadawatha.

PETITIONERS

Vs.

1. Sri Lanka Handicrafts Board,
No. 215,
Buddhaloka Mawatha,
Colombo 07.

2. Dr. S M M Ismail,
Chairman,
Sri Lanka Handicrafts Board,
No. 215,
Buddhaloka Mawatha,
Colombo 07.

3. R A L Udayakumara,

Member

4. P G J ayasinghe,

Member

5. D M Ranjith Bandara,

Member

6. P H Ananda.

Member

7. Keerthi Suranjith Bandara,

Member

8. B A Lalith Wijesekera.

Member

3rd to 8th Respondents are of

Board of Directors,
Sri Lanka Handicrafts Board,
No. 215,
Bauddhaloka Mawatha,
Colombo 07.

9. T M K B Tennekoon,
Secretary,
Ministry of Industry and Commerce,
P. O. Box 570,
73/ 1,
Galle Road,
Colombo 03.

10. Mahinda Seneviratne,
Secretary,
Ministry of Social Empowerment and
Welfare,
1st Floor,

Sethsiripaya,
Battaramulla.

11. S S N de Silva,
Former Additional Secretary
(Development)
Ministry of Rural Economic Affairs,
C/o Secretary,
Ministry of Social Empowerment and
Welfare,
1st Floor,
Sethsiripaya,
Battaramulla.

12. A M K K Attanayake,
Former Senior Assistant Secretary to the
Ministry of Rural Economic Affairs,
and Welfare,
1st Floor.

13. M C Gamage,
Former Director (SME)
Ministry of Rural Economic Affairs,
C/o Secretary,
Ministry of Social Empowerment and
Welfare,
1st Floor,
Sethsiripaya,
Battaramulla.

14. H M A Medawatte,
No. 67 / 7 C,
Namal Uyana,
Niyadagala Road,
Pannipitiya.

RESPONDENTS

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

A.L Shiran Gooneratne J

Counsel:

Shyamal A Collure with A P Jayaweera for the Petitioners.

Chaya Sri Nammuni SC for the 1st – 10th Respondent.

Chathura Galhena with Ms. M Gunawardena for the 14th Respondent.

Argued on : 2018 - 05 - 04

Decided on : 2018 - 07 - 24

JUDGMENT

P Padman Surasena J (P / C A)

The Petitioners in this application prays inter alia for following relief.

- I. a mandate in the nature of a writ of certiorari to quash the decision and / or directive and / or order of the 9th Respondent to interdict the Petitioners contained in the letter produced marked **P 21**,

- II. a mandate in the nature of a writ of certiorari to quash the decision of the Board of Directors of the 1st Respondent Board with regard to the interdiction of the Petitioners contained and / or referred to in the letters produced marked **P 19** and **P 20**,

- III. a writ of Mandamus to compel the 1st to 8th Respondents or any one or more of them to cancel the decision contained and / or referred to in the letters produced marked **P 19** and **P 20** in relation to the interdiction of the petitioners and / or restore the Petitioners in their respective posts at the 1st Respondent Board with payment of arrears of salary and other emoluments, if any, by causing them to report for duty,

- IV. a writ of Mandamus to compel the 1st - 8th Respondents or any one or more of them to remove or cause to be removed the letters produced marked **P 19** and **P 20** from the personal files of the Petitioners.

1st Respondent (Sri Lanka Handicrafts Board) is a statutory Board established by an Act of Parliament (Act No. 35 of 1982). The 1st Petitioner

had functioned as the Chief Operations Officer and the 2nd Petitioner had functioned as the Director Finance of the said Board.

Upon a complaint made by a group of its employees regarding a serious financial and administrative irregularities alleged to have taken place in the institution, the Board of Directors of the 1st Respondent Board had appointed a committee comprising of 10th to 14th Respondents to conduct a preliminary investigation into the said complaint.

The said committee after conducting investigations has submitted a report (Produced marked **R 14**) recommending that a formal investigation be carried out against the 1st and 2nd Petitioners as they have found material against the Petitioners to directly link them with the serious financial misconducts.

The Chairman of the said committee (10th Respondent) had forwarded the said report to the 9th Respondent who is the Secretary of the Ministry relevant to the 1st Respondent Board.

The 9th Respondent upon the receipt of the said report had taken steps to send the letter produced marked **P 21** to the 1st Respondent Board

instructing the Board to institute disciplinary proceedings against the Petitioners as per recommendations by the committee.

The complaint made to this Court by the Petitioners in the instant application is that the decision to suspend the services of the Petitioners had been taken by the 9th Respondent (Secretary of the relevant Ministry) without any power to do so.

However, this Court observes that upon the receipt of the letter dated 2015-11-12, the 1st Respondent Board, at the board meeting held on 2015-11-19, had taken a decision to suspend the services of the Petitioners and institute disciplinary proceedings against them. Thus, this Court is unable to accept the submission of the Petitioners that it is the 9th Respondent who had decided to suspend the Petitioners from their service.

The second argument advanced on behalf of the Petitioners is that the decision to suspend their services was taken as per the Establishment Code which does not apply to them.

However, this Court observes that the Board of Directors at a meeting held on 2016-02-10, had decided to apply the Establishment Code to its employees. It is the Petitioners contention that his service was suspended

on 2015-11-19 which is a date before the date on which the decision to apply the Establishment Code to the employees was taken by the Board.

This Court observes that under section 15 of National Craft Council and Allied Institutions Act No. 35 of 1982, the council is empowered to appoint and dismiss its employees. The said section also has empowered the council to exercise disciplinary control over its employees.

In the case of Sirisena Cooray Vs. Tissa Dias Bandaranayaka and two others¹ the Supreme Court stated as follows.

" ... The grounds of judicial review were originally broadly classified as three-fold. The first ground is illegality; the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it. The second is "irrationality" namely Wednesbury unreasonableness (Associated Provincial Picture Houses Ltd. V Wednesbury Corporation. The third is "procedural impropriety". (Halsbury 4th ed., Vol 11 para 60). To these grounds a fourth may be added "proportionality" See Lord Diplock in CCSU V Minister for the Civil Service at 951. ... "

¹ 1999 (1) S L R 1.

Perusal of the material adduced before Court clearly shows that the Appellant has failed to satisfy Court that any of the above grounds for a writ of certiorari has been made out.

In any case, the Petitioner can face the disciplinary proceedings and exonerate himself from the charges, if he is innocent. Thus, the Petitioner is not without a remedy. It is the view of this Court that, what the Petitioner attempts through this application is to use the writ jurisdiction of this Court to halt the machinery of disciplinary proceedings moving against them. Perusal of the relief prayed for in the petition by the Petitioners show that they are attempting through this application to create circumstances to enable them to be restored in their respective posts at the 1st Respondent Board with payment of arrears of salary and other emoluments, and also to have the letters produced marked **P 19** and **P 20** removed or cause to be removed from their personal files without going through any disciplinary proceedings.

The jurisdiction to issue writs in the nature of certiorari and Mandamus which is vested in this Court by virtue of Article 140 of the Constitution is a jurisdiction which this Court could decide in its discretion to exercise only in

a fit case. This Court is not inclined to assist the Petitioners to tread on the said unlawful path .

In these circumstances, this Court is of the view that it should not decide to invoke its discretionary jurisdiction in favour of the Petitioners.

In these circumstances, and for the foregoing reasons, this Court decides to refuse and dismiss this application.

The Petitioners application has no merit. It has been filed to get this Court to use its powers to stall the due process of law. Thus, each of the Petitioners is directed to pay Rs. 50,000/= each to the state as a state cost.

PRESIDENT OF THE COURT OF APPEAL

A.L Shiran Gooneratne J

I agree,

JUDGE OF THE COURT OF APPEAL