

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application for Writs in the nature of Certiorari and Prohibition under and in terms of Article 140 of the Constitution.

Seenithamby Pal kiararajah,
Theerthakkarai Road,
Mankadu,
Chettiyapalayam

PETITIONER

C.A. Application No. 674/2009

Vs.

1. Dayananda Dissanayake,
Commissioner of Elections,
Elections Secretariat,
Battaramulla.
2. District Elections Returning Office,
Elections Office,
Batticaloa District,
Batticaloa.
3. Returning Office,
Manmunai South Eruvil Pattu Pradeshiya
Sabha,
Elections Office,
Batticaloa District,
Batticaloa.
4. Mr. Edwin Silva Kaileshvararajah,

Secretary,
Tamil Makkal Veduthalai Pulikal,
1/A Upstairs Road,
Batticaloa.

5. Manmunai South Eruvil Pattu Pradeshiya
Sabha,
Kaluwanchikudy.

RESPONDENTS

Before : A.H.M.D. Nawaz, J

Counsel : S. N. Vijith Singh for the Petitioner.

Maithree Amarasinghe, SSC for the Respondent.

Decided on : 19/07/2018

A.H.M.D. Nawaz.J.,

No Counsel appears for the petitioner. This was a matter that was argued before Her Ladyship Justice Rohini Marasinghe on 17/10/2011 and Her Ladyship Justice Rohini Marasinghe had fixed this matter for Written Submissions to be filed on 15/11/2011. The Written Submissions were tendered only on 27/01/2012 and thereafter Her Ladyship had fixed this matter for judgment to be delivered on 27/04/2012. When this matter come up on 27/04/2012, the delivery of the judgment was re-fixed for 14/05/2012. On 14/05/2012 the Petitioner was absent and unrepresented but he

appeared and the Court made order to have this matter mentioned on 30.05,2012 for judgment. On 30.05.2012 the judgment was re-fixed for 28/11/2012.

On 28/11/2012 after having perused the petition, the objections and the Written Submissions, the Court had taken the view that this matter could be settled between the Public Authority and the Petitioner. The Court had given time till 11.01.2013 for terms of settlement to be intimated to the parties. 11/01/2013. Thereafter this case had never come up in Courts. It had not been listed at all until by a motion dated 13/11/2017 filed by the Attorney at Law for the 1st - 3rd respondents the 1st - 3rd respondents moved that this matter be mentioned on one of the three dates given in that motion. This matter was mentioned before A.H.M.D Nawaz, J and E.A.G.R. Amarasekara, J on 30/11/2017 and since the Petitioner was absent and unrepresented. he was noticed to appear in court and a notice was dispatched to the Attorney at Law for the Petitioner to be present in Court on 11/01/2018. When this matter came up on 11/01/2018, S.N. Vijith Singh the Attorney at Law for the Petitioner informed Court that he had no instructions from his client. In interest of justice the Court wanted to go through the pleadings that were filed in this case and make an appropriate order. This order was undertaken to be made by me and after having gone through pleadings I observe that the petitioner sought a writ of certiorari and prohibition challenging his expulsion from his party and his subsequent vacation of membership from Manmunai South Eruvill Pattu Pradeshiya Sabha. This application had been filed on 08/10/2009 in this court seeking *inter alia*:

- A) A Writ of Certiorari quashing the decisions contained in the letter dated 30.07.2009.
- B) A Writ of Prohibition preventing 1st /2nd Respondents from publishing a Gazette notification under Section 10A (1), (2) and (3) of the Local Authorities Elections Ordinance;
- C) A Writ of Certiorari quashing the Gazette notification under Section 10A (1), (2) and (3) of the Local Authorities Elections Ordinance if it has been published.

Section 10A of the Local Authorities Elections Ordinance as amended reads as follows:

“(1) If the elections officer of the district in which a local authority area is situated, is satisfied that any person whose name has been included as a candidate for election as a member of that local authority, in the nomination paper of a recognized political party, has ceased to be a member of that party, the elections officer shall, subject to the provisions of subsection (2), by notice published in the Gazette declare that such person-

- (a) Has vacated his office of member, if he had been elected as a member of that local authority; or
- (b) Has forfeited his rights to have his name retained in the nomination paper of that recognized political party for filling any casual vacancy, and thereupon, such person shall vacate his office as member of that local authority or the name of such person shall be expunged from the nomination paper of that recognized political party, as the case may be, as from the date on which such declaration is published in the Gazette.

(2) The elections officer shall not publish the notice referred to in subsection (1) except after-

(a) notice to such person and such recognized political party;

And

(c) Expiry of a period of twenty-one days from the date of such notice. Every such notice shall be sent by registered post.

(3) Whenever any person whose name has been included in the nomination paper of a recognized political party ceases to be a member of such party the secretary of that party shall furnish such information to the elections officer of the district in which the local authority, to which that nomination paper relates, is situated.

The effect of these provisions is that a person who ceases to be a member of the recognised political party from which he contested the local authority elections shall cease to be a member of that local authority *ipso facto*. The purpose of giving him 21 days in terms of Section 10A (2) is to allow him to challenge the decision of the recognised political party to expel him in the appropriate forum.

These provisions have been interpreted both by the Court of Appeal and the Supreme Court on a number of occasions.

Farook v Siriwardena (Returning Officer) [(1995) 2 Sri.L.R. 124

The Petitioner's name was included in the Nomination paper submitted by the Sri Lanka Muslim Congress, a recognized political party as a candidate for election as a member

of the Colombo Municipal Council at the local elections held in 1991, in terms of S. 28(2) of the Local Authorities Elections Ordinance. The Petitioner was declared elected as a member of the Colombo Municipal Council.

Sometime later the General Secretary of the Party the 2nd Respondent informed the Petitioner with a copy to the Returning Officer - 1st Respondent, that he has been expelled from the Party. Upon receipt of this letter, the 1st Respondent gave the Petitioner notice by registered letter that in terms of S.10A (2) of the Local Authorities Elections Ordinance he would be taking steps after the expiry of 21 days to publish a Notice in the Gazette declaring that he has vacated his office as a Member.

The Petitioner sought a Writ of Certiorari to quash the decision of the 1st Respondent.

It was held:

S. 10A(1) of the Local Authorities Elections Ordinance, enacted by Law No 24 of 1977, provides that whenever any person whose name has been included in the Nomination paper of a recognized Party ceases to be a member of such Party, the Secretary of the Party should furnish such information to the relevant Elections Officer.

S. 10A(1) states that if the Elections Officer *is satisfied* that any person whose name has been included as a candidate for election as a member of that Local Authority in the Nomination Paper of a recognized Political Party, has ceased to be a member of that Party, the Elections Officer should, after Notice to such person and such recognized Political Party and after the expiry of 21 days from

the date of such Notice published in the gazette declare that such person has vacated his office and forfeited his right to have his name retained in the Nomination Paper.

(i) There is nothing in the above provisions to indicate that the Elections Officer should himself take steps to ascertain whether the member has been lawfully removed from the Party.

(ii) The Elections Officer has a ministerial duty to perform on receipt of the said information.

(iii) There is no further duty cast on the Elections Officer other than to give Notice under S. 10A(2) and declare by publishing in the gazette that such person has vacated his office.

This case was appealed to the Supreme Court which upheld the judgment of the Court of Appeal. The decision of the Supreme Court went as follows.

Farook v. Siriwardena, Election Officer and Others [1997] 1 Sri.L.R. 145

The appellant was a member of the Colombo Municipal Council. After calling for his explanation, the recognized Political Party to which he belonged expelled him from the membership of the Party by writing. A copy of the Communication addressed to the appellant was sent to the Election Officer who gazetted the requisite notice of vacancy in the membership of the Council, in terms of the of Section 10A (1) (a) of the Local Authorities Election Ordinance. Consequently,

the recognized political Party nominated a new member in terms of Section 65A (2) of the Ordinance.

This Court also draws attention to *Azmy and another v Attanayake and 5 Others* (2010) B.L.R 42 wherein it was emphasized that a ministerial function (performance of duty) is not amenable to writ jurisdiction. What is meant by a “ministerial function” is described in Jain and Jain in *The Principles of Administrative Law* (1998) 4th Ed. at page 325 as follows:

Functions dischargeable by the administration may either be ministerial or discretionary. A ministerial function is one where the law prescribes the duty to be performed by the concerned authority in certain and specific terms leaving nothing to the discretion or Judgment of the authority. It does not involve investigation into disputed facts or making of choices. The authority concerned acts in Strict Obedience to the law which imposes on it a simple and definite duty in respect of which it has no choice.

The thrust of the cases and the principle is that a ministerial function (performance of duty as prescribed by the law and not a discretionary function) is not amenable to the prerogative writ jurisdiction.

In the circumstances I take the view that there is no merit in this application and in any event it is common ground that the aforesaid Pradeshiya Sabha has since been dissolved and a new Pradeshiya Sabha has been constituted.

In the circumstances it would futile to issue the Writs sought and having regard to the fact that the Petitioner himself has not exhibited due diligence to prosecute this application. This court proceeds to dismiss the application.

JUDGE OF THE COURT OF APPEAL