

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

C.A Writ Application

480/2019

In the matter of an application for mandates in the nature of Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of Sri Lanka.

Don Piyatissa Kumarage

No: 47/35, Louis Peiris Mawatha,

Kandy.

Petitioners.

Vs.

1. Sunanda Kariyapperuma
Commissioner General of Buddhist
Affairs,
"Dahampaya" No: 135, Srimath Anagarika
Dharmapala Mawatha, Colombo 07.
2. W.P.C Wickremaratne
Auditor General,
Auditor General's Department,
306/72. Polduwa Road,
Baththaramulla.

Respondent.

BEFORE

:

**HON.JUSTICE A.H.M.D. NAWAZ (P/CA)
HON. JUSTICE SOBHITHA RAJAKARUNA**

COUNSEL : Upul Jayasuriya PC for the Petitioner.
Sumathi Dharmawardena PC ASG with S.
Wimasena, SSC , N. Kahawita SC for the
Respondent.

ORDER ON : 21.09.2020.

By filing a motion dated 14.09.2020 the learned Additional Solicitor General brings to the notice of this Court that the Petitioner has been informed, through an advertisement by the 1st Respondent published in the Dinamina newspaper dated 12. 08. 2020, of an election for the post of Basnayake Nilame of the Ruhunu Maha Katharagama Devalaya to be held on 22. 09. 2020.

The Petitioner has also attached to his motion a letter marked as X4 dated 25.06.2020, where the office of Basnayake Nilames has been extended for further period of one year. The motion dated 14. 09. 2020 states that in the same may as the post of Basnayake Nilame of other devalaya has been extended, the Petitioner too should be extended in his office.

This motion was supported before this Court and the learned Additional Solicitor General assisted this Court in the consideration of this matter.

The arguments of the both counsel were heard in this matter.

We take the view that the Petitioner could not be extended in the office of Basnayake Nilame as X4 does not give extension to Basnayake Nilames whose services were suspended during a period of 5 years. In the circumstances, we hold that X4 does not apply to the Petitioner in this case.

The second matter that was agitated before us is the imminent election to the Ruhunu Maha Katharagama Devalaya to be held on 22.09.2020. In the course of the argument today before this Court the eligibility of the Petitioner to contest the election came up for review as he sought a stay of the election fixed for 22.09.2020.

The learned Additional Solicitor General brings to the notice of this Court Section 12 of the Buddhist Temporalities Ordinance No: 19 of 1931 as amended. We have given our earnest consideration to the Provisions of Section 12 to ascertain whether the Petitioner suffers from any disqualification to contest the election fixed for 22.09.2020. This issue arose because of the plea for a stay order to stay the elections. It is in those circumstances that this Court examined the Provisions of Section 12 of the Buddhist Temporalities Ordinance. It is an admitted fact that the Petitioner was appointed as the Busnayake Nilame of the Devalaya on 28.04.2015. His suspension took place on 09.04.2018. This Petitioner challenged this suspension by way of writ application bearing No:

171/2018 as pleaded as P20 and this Court as far back as 18.05.2018 refused to issue notice in the matter.

The learned Additional Solicitor General brings to the notice of this Court all the relevant documentation with reference to this application. If not for this suspension which took place on 09.04.2018 this Petitioner would have held office for a period of 5 years till 27.04.2020.

We have examined the provisions of Section 12 of the Buddhist Temporalities Ordinance No: 19 of 1931 and we are of the considered view the suspension would have operated only till 27.04.2020 as both the Sinhala and English versions of the legislation makes it patently clear that the suspension could be operative only during the period of an office of the Busnayake Nilame. We take the view this suspension would have lapsed by 27.04.2020 and there is no extension of this suspension by any Court. Only if this suspension continues beyond 27.04.2020 we take the view that section 12 would operate to disqualify this petitioner from standing for election to the office of Basnayake Nimale. However we do note that this petitioner faces a charge sheet which remains stayed by this Court. There is no disqualification for a person who is charged with or whose charge has been stayed, to stand for election to contest the office of Basnayake Nimale of the Devalaya. We engage in this interpretation of Section 12 because arguments were addressed to this Court by both President's Counsel on the interpretation of Section 12. In the best

traditions of the Attorney-General's office the learned Additional Solicitor General states that if this Court comes to the view that the Petitioner is not disqualified from standing for elections he could do so and proceed to contest the elections. We are of the unanimous view that the Petitioner suffers no impediment to contest this election which is fixed for 22.09.2020.

The Legal officer Ms. Priyanthi Weerasinghe to the office of the Commissioner General of Buddhist Affairs is present in Court and taken note of this order.

A Copy of this order is made available to the Petitioner and the counsel for the State.

PRESIDENT OF THE COURT OF APPEAL

HON. JUSTICE SOBITHA RAJAKARUNA

I agree.

JUDGE OF THE COURT OF APPEAL

Vkg/-