<u>ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගරු අභියාචනාධිකරණයේදීය.</u>

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 the Democratic Socialist Republic of Sri Lanka.

අභියාචනාධිකරණ නඩු අංකය: CA/WRIT/500/23

සහ ඒ යටතේ කියැවෙන බස්නාහිර පලාත් සභාවේ 1998 අංක 3 දරණ සමූපකාර සමිති ප්‍රඥප්තිය සහ ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රයේ අංක 1761/3 සහ 2020-12-5 සංශෝධිත බස්නාහිර පළාත් සභාවේ අංක 2011 අංක 4 දරණ සමූපකාර සමිති (සංශෝධන) ප්‍රඥප්තිය යටතේ කියවෙන ප්‍රඥප්තිය යටතේ තීරක විභාග, තීරක තීන්දු පිළිබඳව

බ.ප.කො 57056, බ.ප.කො 57060,
බ.ප.කො 57061, බ.ප.කො 57062,
බ.ප.කො 57063, බ.ප.කො 57064,
බ.ප.කො 57065, බ.ප.කො 57066,
බ.ප.කො 57067, බ.ප.කො 57068,
බ.ප.කො 57069, බ.ප.කො 57070,
බ.ප.කො 57071, බ.ප.කො 57072,
බ.ප.කො 57000A, බ.ප.කො 57001A,
බ.ප.කො 57002A, බ.ප.කො 57003A,
බ.ප.කො 570040A, බ.ප.කො 57005A,
බ.ප.කො 57006A, බ.ප.කො 57007A,
බ.ප.කො 57008A, බ.ප.කො 57009A,
බ.ප.කො 57010A, බ.ප.කො 57011A,
බ.ප.කො 57012A, බ.ප.කො 57013A,
බ.ප.කො 570042, බ.ප.කො 57043,
බ.ප.කො 57044, බ.ප.කො 57045,
බ.ප.කො 57046, බ.ප.කො 57047,
බ.ප.කො 57048, බ.ප.කො 57049,
බ.ප.කො 57050, බ.ප.කො 57051,
බ.ප.කො 57052, බ.ප.කො 57053,
බ.ප.කො 57054, බ.ප.කො 57057,
බ.ප.කො 57059, බ.ප.කො 57073,
බ.ප.කො 57074, බ.ප.කො 57075,
බ.ප.කො 57076, බ.ප.කො 57077,
බ.ප.කො 57078, බ.ප.කො 57079,
බ.ප.කො 57080, බ.ප.කො 57081,

බ.ප.කොා 57082, බ.ප.කොා 57083, බ.ප.කොා 57084, බ.ප.කොා 57085, බ.ප.කොා 57087, බ.ප.කොා 57088, බ.ප.කොා 57089, බ.ප.කොා 57090, බ.ප.කොා 57091, බ.ප.කොා 57092, බ.ප.කොා 57093, බ.ප.කොා 57094, බ.ප.කොා 57095, බ.ප.කොා 57096, බ.ප.කොා 57097, බ.ප.කොා 57098, බ.ප.කොා 57099, බ.ප.කොා 57014, බ.ප.කොා 57015, බ.ප.කොා 57016, බ.ප.කොා 57017, බ.ප.කොා 57018, බ.ප.කොා 57019, බ.ප.කොා 57020, බ.ප.කොා 57021, බ.ප.කොා 57022, බ.ප.කොා 57023, බ.ප.කොා 57024, බ.ප.කොා 57025, බ.ප.කොා 57026, බ.ප.කොා 57027, බ.ප. කොා 57100, බ.ප.කොා 57101, බ.ප.කොා 57106, බ.ප.කොා 57111, යන තීරක විභාග තීරක තීන්දු පාර් ශවකරුවන් වෙත වගඋත්තරකාර අංක 5-10 දක්වා තීරකවරයන්ගේ තීරක තීන්දු වලට එරෙහි ඉදිරිපත් කරන රිට් ඉල්ලීමයි. 2023-05-19, 2023-05-25, 2023-06-20, 2023-06-22, 2023-08-08 සහ 2021-08-11 දිනැති තීරක තීන්දු වලට සහ බ.ප.කොා 57028, බ.ප.කොා 57030, බ.ප.කොා 57032, බ.ප.කොා 57033, බ.ප.කොා 57034, බ.ප.කොා 57035, බ.ප.කොා 57036, බ.ප.කොා 57037, බ.ප.කොා 57038, බ.ප.කොා 57039, බ.ප.කොා 57040, බ.ප.කොා 57041 2023-08-31 දිනැති ඉහත තීරක තීන්දු වලට එරෙහිව සහ 2023-10-06 දිනැති බ.ප.කොා 57102, බ.ප.කොා 57103, බ.ප.කොා 57104, බ.ප.කොා 57105, බ.ප.කොා 57107, බ.ප.කොා 57108, බ.ප.කොා 57110 (දිනයක් රහිතව එවා ඇති) තීරක තීන්දුවලට එරෙහිව කරනු ලබන රිට් ආයාවනයයි.

ගිණිමැල්ල හේවාගේ ප්‍රියංග නිශාන්ත කුමාර්
අංක :7,දහම් ගම,නන්නපුරාව,
බිබිල.

<u>පෙත්සම්කරු</u>

-එදිරිව-

1. එම්.ඒ.පී.ජයකොඩි
බස්නාහිර පළාත් සමූපකාර
සංවර්ධන කොමසාරිස් සහ
රෙජිස්ට්‍රාර්,
අංක 444,ආදිපාද වීදිය,
කොළඹ 01.

2. ඩබ්ලිව්.එම්.භාග්‍යා වීරසිංහ
කොළඹ දිස්ත්‍රික් සහකාර කොමසාරිස්,
අංක 251/2/ඒ, කොළඹ පාර,
වත්තේගෙදර හන්දිය,
මහරගම.

3. ඩුලානි හෙට්ටිආරච්චි,
සභාපති,
සී/ස වත්තේගෙදර සකසුරුවම්
හා ණය ගණුදෙනු පිළිබඳ
සමූපකාර සමිතිය,
532/සී, වත්තේගෙදර,
සණස.
අංක. 251/2/ඒ, කොළඹ පාර,
වත්තේගෙදර හන්දිය,
මහරගම.

4. අසේල වීරසුන්දර
භාණ්ඩාගාරික,
සී/ස වත්තේගෙදර සකසුරුවම්
හා ණය ගණුදෙනු පිළිබඳ
සමූපකාර සමිතිය,
532/සී, වත්තේගෙදර,
සණස.
අංක 251/2/ඒ, කොළඹ පාර,
වත්තේගෙදර හන්දිය,
මහරගම.

5. එස්.පේ.දිලූකා,
606/එෆ්, නාගහවත්ත,
නවගමුව,
රනාල.

6. අචිනි එස්. තන්තිරිවත්ත,
සමන්යාය,
ගම්මාන පාර,
අලුත්ගම,
බණ්ඩාරගම.

7. එස්.ඒ.පී.අසංකා,
නො:50/1, උස්වත්ත පාර,
දාම්පේ, මඩපාත.

8. ඩබ්.එම්.එල්.ඩබ්.සිරිවර්ධන,
අංක 191/5/2, මූනමල්වත්ත,
කිරිවත්තුඩුව.

9. එච්.චින්තක ෆොන්සේකා,
44, පිච්චමල් උයන,
වැල්ලපිටිය,
හොරණ.

10. ආර්.රච්.පී. චම්පිකා,
නො: 175/16,
ශ්‍රී සීලංකාර මාවත,
මුලේගම,
හෝමාගම.

11. ස්ථානාධිපති,
අපරාධ විමර් ශණ ඒකකය,
අපරාධ පරීක්ෂණ
දෙපාර් තමේන්තුව,
කොළඹ 01.

12. පො/සැරයන් 39053 සුරංග,
අපරාධ විමර් ශණ ඒකකය,
අපරාධ පරීක්ෂණ
දෙපාර් තමේන්තුව,
කොළඹ 01.

13. නීතිපති තුමා,
නීතිපති දෙපාර් තමේන්තුව,
කොළඹ 12.

<u>වගඋත්තරකරුවන්</u>[1]

Before: Mayadunne Corea, J.
Mahen Gopallawa, J.

[1] The caption is re-produced from the amended petition dated 07.02.2025 relied upon by the Petitioner.

Counsel: Dishan Dharmasena for the Petitioner

Jehan Gunasekera, State Counsel for 1st, 2nd and 5th to 13th Respondents

Murshid Maharoof with P. Fernando instructed by Nilmal Wickramasinghe for 3rd and 4th Respondents

Supported on: 29.07.2025

Decided on: 19.09.2025

Mahen Gopallawa J.

Introduction

In the instant application, the Petitioner has sought to impugn the ninety-six (96) arbitral awards made by the 5th to 10th Respondents marked පැ6(1)- පැ6(96). The said arbitrations had been conducted in terms of the Western Province Co-operative Societies Statue No. 03 of 1998 (as amended),[2] pursuant to complaints made by the Wattegedera Multi-Purpose Co-operative Society Limited ("the Society") that the Petitioner had defaulted in the payment of loans obtained by him from the said Society. The cumulative principal amount and interest in default and covered by the aforementioned awards has been stated in the amended petition dated 07.02.2025 as Rs. 158,149,623/=.[3] The Petitioner has also sought to impugn the institution of legal proceedings for the enforcement of the said awards in Nugegoda Magistrates' Court Case No. 1415/18.[4]

The substantive reliefs sought by the Petitioner, which are set out in paragraphs (ඇ), (ඉ), (ඊ), (උ) and (එ) of the prayer to the petition, are as follows;

(ඇ) පැ5(1) සිට පැ5(34) දක්වා ලකුණු කොට ඇති වගඋත්තරකරුවන් දක්වා ඇති ණය මුදල් හා පොළිය ගෙවීම පිළිබඳව ඉදිරිපත් කර ඇති ලේඛණ නොසලකා වගඋත්තරකාර අංක 5 සිට අංක 10 දක්වා වගඋත්තරකරුවන්ගේ පැ6(1) සිට පැ6(96) දක්වා තීරක තීන්දු පරිදි කටයුතු කිරීමට ස්ථිර වාරණ (Certiorari-සෝඹියාරි රිට්) නියෝගයක් පනවන ලෙසත්,

(ඉ) ඉහත පැ10 ගරු නුගේගොඩ මහේස්ත්‍රාත්තුමන්ගේ පැ10 සහ පැ10ඉ නියෝගය පරිදි වෝහාරික විසඳුන පරීක්ෂණ වාර් තාවේ පිටපතක් ගරු අභියාචනාධිකරණයට කැඳවීමට නියෝගයක් අංක 1 වර් ඵමාන වගඋත්තරකරු ඇතුලු වගඋත්තරකරුවන්ට එරෙහිව මැන්ඩාමුස් ආඥාවක් ලබා දෙන ලෙසත්,

(ඊ) ඉහත පැ10 ගරු නුගේගොඩ මහේස්ත්‍රාත්තුමන්ගේ පැ10 සහ පැ10ඉ නියෝගය පරිදි වෝහාරික විසඳුන වාර් තා සලකා බැලීමකින් තොරව අදාල ණය ගනුදෙනු හා ඒවා පියවා තිබියදීත් පෙත්සම්කරුට එරෙහිව නඩු කටයුතු ගොණු කිරීමට එරෙහිව ස්ථිර වාරණ (සෝඹියාරි රිට්) නියෝගයක් ලබා දෙන ලෙසත්,

(උ) අහේතුකව හා අනීතිකව ණය මුදල් හා පොලී වාරික ගෙවා තිබියදීත් අදාල ණය මුදල් අයකර ගැනීමට පෙත්සම්කරුට එරෙහිව ගෙවීමට ඇති ණය මුදල් ලෙස සලකමින් අතිරේක මුදල් අයකර ගැනීමට පියවර ගැනීමට විරුද්ධව වගඋත්තරකරුවන්ට එරෙහිව ස්ථිර (සෝඹියාරි රිට්) වාරණයක් ලබා දෙන ලෙසත්,

(එ) ඉහත කරුනු අනුව පැ9(1) සිට පැ9(118) දක්වා එවා ඇති එන්තරවාසි (ණය) පිළිබඳව කටයුතු කිරීමට වගඋත්තරකරුවන්ට එරෙහිව ස්ථිර වාරණ (සෝඹියාරි රිට්) නියෝගයක් ලබා දෙන ලෙසත්,

[2] The principal Statute was amended by Co-operative Societies (Amendment) Statute No. 04 of 2011

[3] vide paragraphs 8 and 13

[4] vide paragraphs 11(A) and 13 of the amended petition

When the instant application was taken up for support, the learned State Counsel for 1st, 2nd and 5th to 13th Respondents and learned Counsel for 3rd and 4th Respondents objected to the issuance of notice and sought the dismissal of the application. Apart from assailing the merits of the Petitioner's case, the said learned Counsel for the Respondents also raised the following legal objections; that

(a) The Petitioner had misrepresented and suppressed material facts;
(b) The Petitioner had not exercised the statutory alternative remedy available to him under the Western Province Co-operative Societies Statute;
(c) The Petitioner is guilty of *laches*;
(d) The reliefs sought in the petition are misconceived and bad in law; and
(e) The Petitioner had failed to cite the Wattegedera Multi-Purpose Co-operative Society Limited, which was a material and necessary party, as a Respondent in the instant application.[5]

All Counsel made submissions on the merits as well as the aforementioned legal objections. The learned Counsel for the Respondents invited the Court to consider the legal objections as a preliminary matter. However, as the said legal objections are inextricably linked to factual matters, I am of the view that it would be more appropriate and convenient to consider the merits of the Petitioner's case and to consider the legal objections thereafter.

Factual Background

In setting out the factual background to the instant application, I am compelled to heavily rely upon the documents annexed to the petition, the limited objections filed by the 3rd and 4th Respondents and the submissions made by learned Counsel for the parties, since the factual narrative set out in the petition is extremely brief and incomplete.

As set out in the limited objections of the 3rd and 4th Respondents and as submitted by learned Counsel for the Respondents, the Petitioner had served as the Secretary of the Co-operative Society and had obtained 112 loans for himself amounting to over Rs. 150 million during his tenure of office.[6] He had failed to repay the said loans. After serving the letter demands marked පැ9(1)-පැ9(116), arbitration proceedings had been initiated as provided for in section 58 of the Western Province Co-operative Societies Statue No. 03 of 1998 (as amended)("the Statute") when a dispute has arisen between a member and the Society. The summons served on the Petitioner to attend the arbitration proceedings have been annexed to the petition marked පැ3(1)-පැ3(114)[7] and පැ4(1)-පැ4(92). As per such notice, it appears that arbitration proceedings have been initiated against the Petitioner as the borrower and the two sureties to the loans. It is conspicuous that the same persons, namely, Sithi Fazeela and Tuan Faroon Haniffa, who are said to be a married couple, have acted as sureties in all the loans taken by the Petitioner.

[5] The legal objections (a)-(d) were raised by the learned State Counsel. The legal objection (e) was raised by the learned Counsel for the 3rd and 4th Respondents, who also associated himself with the legal objections raised by learned State Counsel.
[6] vide paragraphs 3 and 4 of the limited objections. The
[7] There is a discrepancy between the markings given to the documents in the petition and the documents actually annexed thereto

The Petitioner states that he had participated in the arbitrations and had submitted the documents marked පැ5(1)-පැ5(34), which he states indicates the repayments of the loans made by him.[8] However, it is observed that the Petitioner has not annexed any documents to the petition in proof of such fact or indicating the position taken up by him at the arbitration. The Petitioner had been found liable in all arbitrations and ordered to pay a cumulative amount of Rs. 158,149,623/= as principal and interest in default. In the instant application, the Petitioner has sought to impugn the arbitral awards marked පැ6(1)-පැ6(96).

The Petitioner appears to have preferred appeals in respect of some of the aforementioned arbitral awards. Although such appeals have been identified as පැ7(1)-පැ7(56) in the petition, a perusal of the docket reveals that only the documents marked පැ7(1)-පැ7(4) and පැ7(8), පැ7(11), පැ7(14), පැ7(17), පැ7(20), පැ7(23), පැ7(26), පැ7(29) and පැ7(32) constitute appeals and that the documents marked පැ7(35)-පැ7(56) appear to be statements made by the Petitioner on 08.08.2023 in relation to the said appeals at the Office of the Assistant Commissioner of Co-operative Development of the Colombo District. The petition also does not disclose the outcome of the Petitioner's appeals and neither did the learned Counsel for the Petitioner offer any clarification in respect of the above matters when the application was taken up for support. In their limited objections, the 3rd and 4th Respondents have stated that the Petitioner had preferred appeals only in respect of 15 awards and that they were pending before Commissioner of Co-operative Development.[9]

The limited objections of the 3rd and 4th Respondents also disclose that the Society had sought enforcement in respect of 97 arbitral awards where the Petitioner had not preferred appeals in terms of section 59 of the Statute. It was clarified by learned Counsel that such proceedings were pending. However, the sole reference made in the petition is to Case No. 1415/18 instituted in the Magistrates' Court of Nugegoda and proceedings in such case have been annexed to the petition marked පැ10. The relief sought in paragraph (ඊ) of the prayer to the petition too relate to the said case. A perusal of the proceedings පැ10 disclose that the aforementioned case is a criminal prosecution filed by the Officer-in-Charge, Criminal Investigation Unit of the Criminal Investigation Department against 13 accused, including the Petitioner, who has been cited as the 4th accused.[10] In fact, it has been stated in the limited objections of the 3rd and 4th Respondents that investigations had commenced pursuant to complaints made by depositors who were unable to recover their deposits.[11] Hence, as submitted by the learned Counsel for the Respondents, the said Case No. 1415/18 does not have any bearing or relevance to the enforcement of the arbitral awards against the Petitioner. In similar vein, I observe that the Petitioner has failed to provide information on the enforcement proceedings relating to the arbitral awards to this Court.

Grounds of Review and Analysis

The Petitioner alleges that action initiated by the Respondents to recover a cumulative amount of Rs. 158,149,623/= from the Petitioner without considering the repayments made by him evidenced by පැ5(1)- පැ5(34) and without considering the order of the learned Magistrate in Case No. 1415/18 to submit a forensic audit report marked පැ10(a)[12] was illegal and irrational (vide paragraphs 7 and 13 of the petition).

[8] vide paragraph 7 of the petition
[9] vide paragraph 4(f)
[10] vide P10 (page 587 of the Brief)
[11] vide paragraph 5(d)
[12] vide proceedings dated 29.01.2021 at p 594 of the Brief

When the application was taken up for support, the learned Counsel for the Petitioner submitted that the entries in official records maintained by the Society had been fraudulently altered by the current office bearers as an act of revenge against the Petitioner and that he had also not been permitted to inspect such records or provided information requested under the Right to Information Act. He also referred to section 31(1) of the Statute relating to proof of entries in books of the Society. In addition, he submitted that certain awards referred to loans obtained from the Padukka MPCS, of which he was not even a member.[13] It was also submitted that the Petitioner had been unable to prefer appeals in respect of all awards due to the inability to furnish a security deposit as required by section 58(3) of the Statute.

In response, both learned Counsel for the Respondents submitted that the fact that the loans had been taken by the Petitioner and he was in default was properly documented in the official records of the Society. The Statement of Petitioner's Loan Account annexed to the petition marked පැ9(117)- පැ9(118) confirms that a cumulative amount of Rs. 158,149,623/= as principal and interest was in default as at 20.08.2020.[14] Regarding the reference to the Padukka MPCS in certain awards, it was submitted by Counsel for the Respondents that such reference was an oversight and that no prejudice had been caused to the Petitioner thereby since the arbitral reference number, loan particulars and amounts had been correctly set out in the said awards.

In relation to evidence of repayment, learned Counsel for the Respondents submitted that some of the documents relied upon by the Petitioner (පැ5(20)-පැ5(30) were illegible and that if any repayments had in fact been made, they would be recorded in the official loan accounts.

The learned Counsel for the Respondents also contended that, as reflected in the proceedings පැ10(a), the learned Magistrate in Case No. 1415/18 had merely recorded that a forensic audit had not been conducted and that the order made by him was a direction to the Commissioner to conduct an audit and submit the report of same. Accordingly, they submitted that there was no order directing a forensic audit, and, that in any event, the said case had no relevance to the arbitral awards impugned in the instant application.

I now wish to examine the circumstances relating to the conduct of the arbitrations in issue in the instant application. In the first instance, I observe that, since loans obtained by the Petitioner from the Society were in default, a "dispute" existed between such parties that was capable of being referred to arbitration under section 58 (2) of the Statute. It is further observed that the Petitioner too has not challenged the reference of disputes to arbitration. Prior to the commencement of the arbitration, the Petitioner had received letter demands පැ9(1)-පැ9(116). Distinct summons to attend and produce oral and documentary evidence at the arbitral inquiries in respect of each reference been served on the Petitioner, as evidenced by the documents marked පැ3(1)-පැ3(114) and පැ4(1)-පැ4(92). In the petition, the Petitioner has stated that he had attended the inquiries and had submitted the documents marked පැ5(1)-පැ5(34) in proof of repayment (vide paragraph 7). I also wish to observe that, since the Petitioner has not annexed any documentary evidence that he had tendered at the arbitral inquiries or the proceedings of such inquiries to the petition, this Court is not in a position to examine the veracity or otherwise of the several allegations that were made when the instant application was taken up for support. Such allegations included the non-consideration of evidence of repayment submitted by him, fraudulent alteration of official records of the Society, and acts of revenge by certain parties against him.

[13] vide appeals marked P7(1)-P7(4)
[14] vide pp 585-586 of the Brief

I observe that the awards in respect of each reference had been communicated to the Petitioner under the hand of the respective arbitrator, as evidenced by පැ6(1)-පැ6(96). The said awards contain, *inter alia,* the Petitioner's liability in respect of the loan, order and a time limit for payment and the availability of an appeal including applicable time limit and security requirements.

As evidenced by the documents marked පැ7(1)-පැ7(4) and පැ7(8), පැ7(11), පැ7(14), පැ7(17), පැ7(20), පැ7(23), පැ7(26), පැ7(29), පැ7(32) and පැ7(35)-පැ7(56), at least in respect of certain awards, the Petitioner has exercised the right of appeal conferred by section 58(3) of the Statutes and had made written statements on 08.08.2023 relating to such appeals at the Office of the Assistant Commissioner of Co-operative Development of the Colombo District.

It is evident from the above narrative that the arbitration proceedings have been conducted in accordance with the provisions of section 58 of the Statute and I am unable to find any illegality or irrationality either in the procedure adopted or the awards made. Considering the fact that the Petitioner had not complied with the awards, the Respondents were entitled in law to institute enforcement proceedings under section 59 of the Statute. Such a course of action too cannot be considered as being illegal or irrational. In this regard, I am inclined to agree with the Respondents that a forensic audit is not a requirement in the arbitral enforcement proceedings.

It is trite law that, in an application for judicial review, the scope of inquiry that a Court is mandated to undertake relates to an examination of the legality of the impugned order, as opposed to its merits Such distinction between judicial review and appeal on merits has been articulated in the celebrated text ***Wade & Forsyth's Administrative Law***[15] in the following terms;

The system of judicial review is radically different from the system of appeals. When hearing an appeal, the court is concerned with the merits of a decision: is it correct? When subjecting some administrative act or order to judicial review, the court is concerned with its legality: is it within the limits of the powers granted? On an appeal the question is 'right or wrong?' On review the question is 'lawful or unlawful?'[16]

In the aforementioned circumstances, I am of the view that the Petitioner has failed to establish that the conduct of the Respondents is either illegal or irrational or has occasioned any procedural impropriety warranting the intervention of this Court sitting in judicial review.

Legal Objections raised by the Respondents

Notwithstanding my aforementioned views on the merits and for the sake of completeness, I now intend to address the five (5) preliminary objections raised by learned Counsel for the Respondents.

(a) Misrepresentation and Suppression of Material Facts

The objection raised by the learned State Counsel was that the Petitioner had either suppressed or misrepresented key material facts demonstrating a distinct lack of *uberrima fides*. It was submitted that the Petitioner had suppressed the fact that he had functioned as the Secretary of the Society and had obtained the loans during his tenure of office. Furthermore, the Petitioner had failed to provide particulars relating to appeals he had lodged and the enforcement proceedings filed in

[15] C.F. Forsyth & I.J. Ghosh, *Wade & Forsyth's Administrative Law* (12th edn, Oxford University Press, 2023) 15.
[16] The above position has been consistently maintained by this Court in exercising its writ jurisdiction including in ***Nicholas v. Macan Markar Limited*** [1985] 1 Sri L.R. 130 and ***Alahakoon Mudiyanselage Jayanthi Anulawathie v. Ananda Senaratne Bandara Jayasundara,*** CA (Writ) Application No. 152/2021, decided on 21.10.2022

respect of the awards. The learned State Counsel also submitted that the Petitioner had misrepresented the fact that Case No. 1415/18 (ඵ්10) related to the enforcement of arbitral awards and that the learned Magistrate had ordered a forensic audit in the said case on 29.01.2021.

In addition, in the limited objections of the 3rd and 4th Respondents, it has been *inter alia,* stated that, whilst there was a ceiling on the amount of loans that may be given to an individual member, the Petitioner had abused his powers as Secretary and obtained loans in excess of such limits, and due to such fact, the Society had been unable to return monies deposited by members and faced serious operational issues. Accordingly, the 1st Respondent had taken steps under section 48 of the Statute to dissolve the Executive Committee and appoint 03 officials from the Department of Co-operative Development, including the 3rd and 4th Respondents, to manage the affairs of the Society.[17] It is pertinent to note that the Petitioner has not responded to such allegations by way of a counter-affidavit.

The learned Counsel for the Petitioner was unable to provide a plausible explanation for the Petitioner's aforementioned conduct when the application was taken up for support. I observe that the aforementioned matters are all matters within the knowledge of the Petitioner and are necessary and material to a proper adjudication of this application. In this context, I wish to refer to the decision of this Court in ***Fonseka v. Lt. General Jagath Jayasuriya and others,***[18] wherein, inter alia, material facts were described as follows (per Basnayake J);

> *"Material facts are those which are material for the judge to know as dealing with the application as made, materiality is to be decided by court and not by the assessment of the applicant or his legal representatives."*

It is well established in our law that suppression and misrepresentation of material facts demonstrates a lack of *uberrima fides* and that a Court sitting in judicial review will not hesitate to deny prerogative relief to a petitioner who engages in such conduct. For instance, in ***Jayasinghe v. The National Institute of Fisheries and Nautical Engineering and others,***[19] the obligation upon a petitioner seeking relief from Court was set out by the Supreme Court in the following terms (per Yapa J);

> *"When a litigant makes an application to this Court seeking relief, he enters into a contractual obligation with the Court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly. This is a duty cast on any litigant seeking relief from Court. In the case of* ***Blanca Diamonds (Pvt) Limited v. Wilfred Van Els and Two Others,***[20] *the Court highlighted this contractual obligation which a party enters into with the Court, requiring the need to disclose uberrima fides and disclose all material facts fully and frankly to Court. Any party who misleads Court, misrepresents facts to Court or utters falsehood in Court will not be entitled to obtain redress from Court. It is a well-established proposition of law, since Courts expect a party seeking relief to be frank and open with the Court. This principle has been applied even in an application that has been made to challenge a decision made without jurisdiction. Further, Court will not go into the merits of the case in such situations. Vide* ***Rex v.***

[17] vide paragraphs 3 and 4

[18] [2011] 2 Sri L.R. 372. This decision has been cited with approval in ***Oru Mix Asphalt Pvt Ltd v. W. A. Sepalika Chandrasekara, Commissioner General of Inland Revenue and others*** (CA Writ Application No. 820/2024), decided on 30.04.2025 (per Corea J)

[19] [2002] 1 Sri L.R. 27

[20] [1997] 1 Sri LR 360.

Kensington Income Tax Commissioners; Princess Edmond De Polignac.[21] *This principle of uberrima fides has been applied not only in writ cases where discretionary relief is sought from Court, but even in Admiralty cases involving the grant of injunctions."*

In my view, the aforementioned conduct on the part of the Petitioner demonstrates a serious lack of *uberrima fides* on the part of the Petitioner in failing to make a full and fair disclosure of all material facts. Hence, I uphold the objection raised by Counsel for the Respondents.

(b) Availability of Alternative Remedies

The learned State Counsel submitted that a statutory right of appeal had been accorded to a party aggrieved by an award of an arbitrator under section 58(3) of the Statute and that the Petitioner had failed to avail himself of such remedy. Although the Petitioner had stated that he had preferred appeals in paragraph 8(b) of the petition and submitted the documents marked පැ7(1)-පැ7(4) and පැ7(8), පැ7(11), පැ7(14), පැ7(17), පැ7(20), පැ7(23), පැ7(26), පැ7(29), පැ7(32) and පැ7(35)-පැ7(56පැ7(1)-පැ7 in relation thereto, it is observed that he has not stated how many such appeals were made or what the outcome of such appeals were. In their limited objections, the 3rd and 4th Respondents have stated that the Petitioner had preferred appeals only in respect of 15 out of a total of 112 awards.

The only excuse provided by the learned Counsel for the Petitioner in response was that the Petitioner had been unable to prefer appeals in respect of all awards due to the inability to furnish a security deposit as required by section 58(3) of the Statute. In my view, such excuse cannot be accepted as a justifiable reason in law not to exercise an equally efficacious statutory remedy. It is observed that a comprehensive and self-contained regime for the resolution of disputes among co-operative societies and their members has been included in Chapter X (sections 58-60) of the Western Province Co-operative Societies Statue No. 03 of 1998 (as amended), which appears to be substantively based on the Co-operative Societies Law No. 05 of 1972 (as amended) and, it would defeat the entire purpose of such statutory scheme if the position taken up by the Petitioner is condoned. Hence, I am inclined to uphold the objection raised by the Counsel for the Respondents.

(c) Laches

It was submitted by learned State Counsel that the Petitioner was guilty of *laches* in as much as the Petitioner had instituted the instant application on 31.08.2023 after a period of over two years from making of certain awards.[22] Whilst such position appears to be correct in respect of the awards marked පැ6(1)-පැ6(14), I note that the rest of the awards marked පැ6(15)- පැ6(96) have been made during the period 25.05.2023 to 22.06.2023. Thus, viewed in its entirety, I am inclined to the view that the objection relating to *laches* will not have the effect of totally disentitling the Petitioner to the reliefs prayed for in the petition.

(d) Reliefs Misconceived in Law

The learned State Counsel submitted that there was a misjoinder of reliefs in that the Petitioner has sought to import orders made in Case No. 1415/18, which was a criminal prosecution, into enforcement proceedings in respect of the arbitral awards, which were independent and separate proceedings. In particular, he pointed out that the writ of mandamus sought compelling the Respondents to submit the forensic audit report was totally misconceived as no order to conduct a

[21] [1917) 1 KB 486.
[22] vide P6(1)-P6(14)

forensic audit had been made by the Learned Magistrate, as reflected in the proceedings of 29.01.2021 (පැ10). Hence, I am inclined to uphold the above legal objection in relation to the reliefs sought in paragraphs (ඉ) and (ඊ) of the prayer to the petition. In so far as other reliefs are concerned, notwithstanding certain linguistic and translation imperfections and the fact that the Petitioner may not be entitled to such reliefs on the merits, I am of the view that they have been cast with sufficient clarity to be position appears to be well founded, I also wish to notice that the prayers for the quashing of the arbitral awards have been cast with sufficient clarity to be considered by this Court.

(e) Material and Necessary Parties

The objection on the failure to cite material and necessary parties was raised by the learned Counsel for the 3rd 4th Respondents in view of the Petitioner's failure to cite the Wattegedera Multi-Purpose Co-operative Society Limited as a party in these proceedings.

The parameters in determining who is a necessary party in writ applications have been most usefully articulated by the Supreme Court in ***Wijeratne (Commissioner of Motor Traffic) v Ven. Dr. Paragoda Wimalawansa Thera and others***[23] as follows (per Amaratunga J);

> *(1) The first rule regarding the necessary parties to an application for a Writ of Certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made a Respondent to the application.*
>
> *(i) If it is a body of persons whose decision or exercise of power is sought to be quashed, each of the persons constituting such body who took part in taking the impugned decision or the exercise of power should be made a Respondent. The failure to make such person or persons as Respondents to the application is fatal and provided in itself a ground for the dismissal of the application in limine.*
>
> *(ii) If the act sought to be impugned had been done by one party, who has power granted by law to give such direction, the party who had given the directions is also a necessary party and the failure to make such party a Respondent is fatal to the validity of the application.*
>
> *(2) The next rule is that those who would be affected by the outcome of the Writ application should be made Respondents to the application.*
>
> *(3) A necessary party to an application for a Writ of Mandamus is the officer or the authority who has the power vested by law to perform the act or the duty sought to be enforced by the Writ of Mandamus. All persons who would be affected by the issue of Mandamus also shall be made Respondents to the application.*

In the context of the instant application, the learned Counsel for the 3rd and 4th Respondent submitted that, although the Petitioner had cited the President and Treasurer of the Society as the 3rd and 4th Respondents, the Society itself was as a distinct body corporate by virtue of section 20 of the Statute. He further submitted that the Petitioner had taken the loans from the Society, that the dispute referred for arbitration was between the Society and the Petitioner, and as enforcement

[23] [2011] 2 Sri L.R. 258. Also see ***Rawaya Publishers and another v. Wijeyadasa Rajapaksha, Chairman, Sri Lanka Press Council and others*** [2001] 3 Sri L.R. 213

action had been initiated by the Society, the said Society was a necessary and material party to a proper and final adjudication of the instant application.

The response of the learned Counsel for the Petitioner was that the 3rd and 4th Respondent's adequately represented the Society. I am unable to accept such position. In the first instance, the Society has a distinct and separate existence from its members and officers. Secondly, in the instant case, the party most aggrieved if the reliefs prayed for by the Petitioner are granted, is the Society itself.

Thus, I am convinced that the Society is a necessary and material party that would be directly affected by its outcome, as contemplated in the aforementioned decision of the Supreme Court, and I am inclined to uphold the objection raised by the learned Counsel for 3rd and 4th Respondent. In arriving at such a conclusion, I am also guided by the decision of the Supreme Court in In ***Murugesu v. Amerasinghe.***[24] In the said case, wherein the petitioner sought a writ of prohibition against reference of a dispute between him and the Society to arbitration, it was held that the Co-operative Society was a necessary party to an application and that the failure to make the Society a party was a fatal irregularity.

Conclusion and Orders of Court

For the reasons set out above, I hold that the Petitioner has failed to establish a *prima facie* case for the issuance of notice. The legal objections raised by the Respondents, as determined by me above, too, militate against the grant of prerogative relief to the Petitioner. Therefore, I decline to issue formal notice and the application is accordingly dismissed. No costs.

Application is dismissed.

Judge of the Court of Appeal

Mayadunne Corea J.

I agree.

Judge of the Court of Appeal

[24] 52 NLR 303