

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

*In the matter of an application for a
Mandate in the nature of Writ of
Mandamus under Article 140 of the
Constitution.*

Ven. Thiniyawala Palitha Thero,
Viharadhipathi,
Nugegoda Nalandaramaya,
No. 29/160, D.M. Colambage Road,
Colombo 05.

PETITIONER

CA Writ Application No: 604/2024

Vs.

1. Secretary,
Ministry of Public Administration,
Home Affairs, Provincial Councils
and Local Government,
Independence Square,
Colombo 07.
2. Secretary,
Ministry of Buddhasasana, Religious
and Cultural Affairs,
8th Floor, Sethsiripaya,
Battaramulla.
3. Commissioner General,
Department of Buddhist Affairs,
No.135, Srimath Anagarika
Dharmapala Mawatha,
Colombo 07.
4. Secretary to the President,
Presidential Secretariat,
Colombo 01.

5. Secretary to the Prime Minister,
Office of the Prime Minister,
No. 58, Srimath Anagarika
Dharmapala Mawatha,
Colombo 07.
6. Human Rights Commission,
No. 14, R. A. De Mel Mawatha,
Colombo 03.

RESPONDENTS

And now between

Rev. Medagama Dhammananda
Lekhakhadhikari,
Asgiriya Chapter of the Siam Nikkaya,
Asgiriya Maha Viharaya, Kandy.

1st INTERVENIENT – PETITIONER

Ven. Pahamune Sumangala Nayaka Thero,
The Chief Registrar of the Malwatta
Chapter,
Pahamune Temple,
Malwatta Maha Viharaya, Kandy.

AND ALSO:

The Incumbent Viharadhipathi,
Somawathie Raja Maha Viharaya,
Polonnaruwa.

2nd INTERVENIENT – PETITIONER

Vs.

Ven. Thiniyawala Palitha Thero
Viharadhipathi,
Nugegoda Nalandaramaya,
No.29/160, D.M. Colabage Road,
Colombo 05.

PETITIONER-RESPONDENT

1. Secretary,
Ministry of Public Administration,
Home Affairs, Provincial Councils
and Local Government,
Independence Square,
Colombo 07.
2. Secretary,
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and Cultural Affairs,
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Dharmapala Mawatha,
Colombo 07.
6. Human Rights Commission,
No.14, R. A. De Mel Mawatha,
Colombo 03.

RESPONDENTS-RESPONDENTS

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

Counsel: Manohara de Silva, PC with Harithriya Kumarage and Kaveesha Gamage for
1st Intervient-Petitioner.

Sanjeeva Jayawardena, PC with Rukshan Senadheera and Eranga Thilakarathne for 2nd Intervenient-Petitioner.

Ikram Mohamed, PC with Vinura Jayawardene and Harish Balakrishnan for the Petitioner-Respondent.

Manohara Jayasinghe, Deputy Solicitor General with Shemanthi Dunuwille for 1st to 6th Respondents.

Written Submissions: 1st Intervenient-Petitioner on 01.08.2025.

2nd Intervenient-Petitioner on 31.07.2025.

Petitioner-Respondent on 29.07.2025.

Inquiry on: 16.06.2025 and 01.08.2025

Decided on: 26.09.2025

Mahen Gopallawa, J.

Introduction

The 1st Intervenient-Petitioner is the Lekhakadhikari of the Asgiriya Chapter of the Mahaviharavanshika Shyiamopali Maha Nikaya (Siam Nikaya) and the 2nd Intervenient-Petitioner is the Chief Registrar (Pradhana Lekakadhikari) and a member of the Karaka Sangha Sabha of the Malwatta Chapter of the aforesaid Mahaviharavanshika Shyiamopali Maha Nikaya (Siyam Nikaya) (hereinafter collectively referred to as “the Intervenient-Petitioners”).

The Intervenient-Petitioners, by their intervention-petitions filed on 09.01.2025 and 10.01.2025 respectively, have sought to intervene in the instant application upon the basis that they and the Malwatta and Asgiriya Chapters of the Siam Nikaya they represent are directly affected by the relief sought by the Petitioner-Respondent (hereinafter referred to as “the Petitioner”) in the instant application. The Petitioner has objected to the intervention and filed his Statement of Objections on 19.03.2025.

When the applications for intervention were taken up for inquiry on 18.06.2025, Counsel representing all parties moved this Court to decide the issue of intervention on written submissions and the same was allowed. Order on intervention was reserved by Court on 01.08.2025, after granting parties an extension of time to file their written submissions.

Factual Background

In order to consider the applications for intervention in their proper perspective, it would be necessary and useful to examine the factual background to the original application filed by the Petitioner and the circumstances relating to the intervention.

In the petition dated 24.09.2024, the Petitioner has described himself as the Chief Sanghanayaka of the Bentara Chapter of the Sri Jayewardenepura Kotte Sri Kalyani Samagri Dharma Maha Sangha Council (hereinafter referred to as “Kotte Sri Kalyani Samagri Dharma Maha Sangha Council”) and a member of the said Dharma Maha Sangha Sabhawa.¹ The Petitioner has instituted the instant application seeking a writ of Mandamus compelling the 1st to 5th Respondents to implement the recommendations of the Human Rights Commission (HRC) (“the 6th Respondent”) dated 11.03.2024 marked ‘P10’. The said recommendations have been signed by the Chairman and another Commissioner of the HRC.

In the aforementioned recommendations marked ‘P10’, the HRC has arrived at a finding that the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa has not received the same rights, privileges and benefits afforded to the Malwatu and Asgiri Sangha Sabha of the Siam Nikaya, and the other Nikaya Sects (Nikaya Mulasthana), and, thereby, the fundamental rights of the Petitioner guaranteed under Article 12(1) of the Constitution have been infringed. Accordingly, the Commission recommended that the Respondents should take action as follows;

- (a) to consult the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa in all matters where the opinions of the Malwatu and Asgiri Chapters of the Siam Nikaya are obtained;
- (b) to provide representation to the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa alongside other main Sangha Sabhas in appointing the Buddhasasana Advisory Council;
- (c) to provide suitable seating arrangements for the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa similar to Malwatu and Asgiri Chapters;
- (d) to provide same level of State patronage to Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa in ordainment and funeral ceremonies of Mahanayakes as provided to other Sangha Sabhas;
- (e) to provide financial assistance to the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa similar to the financial assistance provided for other Nikaya Sects (Nikaya Mulasthana) recognized by the State; and

¹ Vide paragraph 1.

- (f) to provide the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa with same privileges in making nominations to foreign tours and to provide other facilities as other Sangha Sabhas.²

The Petitioner states that the said recommendations ('P10') have been made by the HRC consequent to an inquiry conducted into the complaint lodged by him bearing no. HRC/3704/23 dated 02.09.2023, marked 'P1'. In the said complaint, the Petitioner has alleged that, although the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa functions as an independent Sangha Sabha, the status, rights, privileges and entitlements accorded to Malwatu and Asgiri Chapters are not accorded to it, and such conduct was violative of Article 12(1) of the Constitution. Accordingly, the Petitioner sought a recommendation from the HRC to the effect that all rights, privileges and entitlements accorded to Malwatta and Asgiriya Chapters should be provided to Sri Jayewardenepura Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa as well.³ Although several parties including His Excellency the President, Hon. Prime Minister and Hon. Attorney General were cited as Respondents in the complaint marked 'P1', it is observed that the inquiry before the Commission had only proceeded against the 1st to 5th Respondents.

According to the petition, an inquiry had been conducted on 24.10.2023 and the proceedings of the same have been annexed to the petition marked 'P4'. As per these proceedings, it appears that the inquiry had been conducted before a Commissioner and two other officers of the HRC and the Petitioner, the Anunayake Thero of the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa and representatives of the 1st, 3rd and 5th Respondents. The petition also discloses that, thereafter, written representations had been made by the 1st Respondent ('P5'), the 3rd Respondent ('P6') and the 5th Respondent ('P7'). The Petitioner was afforded an opportunity to respond to the same ('P9').

Upon receipt of the recommendations ('P10'), the 2nd Respondent by letter dated 16.05.2024 ('P13') had informed the HRC of certain difficulties in giving effect to the same and had sought further instructions from the Commission. The 3rd Respondent had also informed the Commission by letter dated 12.07.2024 ('P14') of the various facilities being provided by the State to Nikayas and Nikaya Sects.

Meanwhile, as borne out in petition and the intervention-petitions, a petition to intervene in the inquiry before the HRC (HRC/3704/23) dated 16.04.2024 had been filed by the Interventient-Petitioners ('P12'), after the recommendations marked 'P10' had been made. The Interventient-Petitioners had, *inter alia*, sought the vacation of the "order" 'P10', the addition of the Malwatta and Asgiriya Chapters of the Siam Nikaya or their representatives and to re-hear the complaint in their intervention-petitions. Thereafter, the Interventient-Petitioners and the Petitioner had been summoned for a meeting by the HRC on 16.08.2024 ('P15'), and, at the said meeting, according

² Vide page 11 of 'P10'. The said findings and recommendations of the HRC in 'P10' has also been summarized in paragraph 27 of the petition.

³ A summary of the complaint marked 'P1' has been provided in paragraph 13 of the petition.

to the petition, the Commission had inquired as to whether the matter could be settled and had scheduled a mediation meeting for such purpose on 02.10.2024.⁴ However, the Petitioner had informed the Commission, by letter dated 20.08.2024 ('P16') that "as the complaint to the HRCSL had not been made against the said Malwatu and Asgiri Sangha Sabha but only against the officers of the State," he would not be attending the scheduled mediation meeting.⁵ It is observed that the official records maintained by the HRC on such matters are not available to this Court to verify such matters.

The petition further discloses that letters of demand had been made through his Attorney-at-Law ('P17') to the 1st to 5th Respondents to have the recommendations ('P10') implemented, and, had received the communications marked 'P18' and 'P19' from the 3rd and 4th Respondents⁶ in response thereto. In fact, the Petitioner had been informed by 'P19' that the Interventient-Petitioners had sought to intervene in the proceedings before the HRC.

Thereafter, the Petitioner instituted the instant application on 25.09.2024 challenging the failure on the part of the 1st to 5th Respondents to give effect to the recommendations of the HRC marked 'P10'. The Petitioner has pleaded his entitlement to the reliefs sought in paragraphs 43-45 in the following terms;

43. The Petitioner also pleads that, as the Human Rights Commission has made its final recommendation marked 'P10' above, which is final, and has thereby concluded the said inquiry before it, the said Mahanayakes are not entitled in law to intervene in the said concluded matter, and the 1st to 5th Respondents are not entitled to refuse to implement the said recommendations on the ground of the said application made by the Mahanayakes to intervene in the said matter before the Human Rights Commission.

44. The Petitioner pleads that, in the above circumstances, the 1st to 5th Respondents have not agreed to implement the said recommendations and/or have failed to implement the same, though bound to do so and/or demanded to implement the same. Thus, the 1st to 5th Respondents have refused to implement the said recommendations and/or have wrongfully failed to implement the said recommendations.

45. In the circumstances, the Petitioner pleads that he is entitled to a Mandate in the nature of a Writ of Mandamus to compel the 1st to 5th Respondents to implement the recommendations of the Human Rights Commission, the 6th Respondent, dated 11.03.2024, marked 'P10' above.

⁴ Vide paragraph 35 of the petition.

⁵ Vide paragraph 36 of the petition.

⁶ Vide paragraphs 40-42 of the petition.

The application was supported on 04.10.2024 and notice was issued on all Respondents. The parties were also afforded time to ascertain whether the matter could be resolved administratively, which was unsuccessful.

In the meantime, by the intervention-petitions filed on 09.01.2025 and 10.01.2025, the Intervenant-Petitioners had moved this Court to add them as Respondents to the instant application. In his written submissions, the 2nd Intervenant-Petitioner has also disclosed that he had filed a separate writ application bearing no. CA WRIT 209/2025 challenging the legality and validity of the recommendations issued by the HRC ('P10').⁷

Grounds for Intervention of the Intervenant-Petitioners and Response of the Petitioner

A perusal of the intervention-petitions discloses that the Intervenant-Petitioners have sought to intervene in the instant application upon the common basis that the Petitioner is seeking to implement a recommendation of the HRC (P10), which had been obtained ex-parte on the basis that the State had discriminated the Kotte Sri Kalayani Samagri Dharma Maha Sangha Sabha vis-à-vis the Malwatta and Asgiriya Chapters of the Siam Nikaya without notice to the said Nikaya and/or the Mahanayake, or any representative body of the said Nikaya or the Intervenant Petitioners naming either of them as Respondents in these proceedings. Such matter has been elaborated in the written submissions of the 1st Petitioner-Respondent in the following terms;

It is respectfully submitted that the Petitioner-

- i) failed to make the intervenient petitioner a party to the said proceedings before the Human Rights Commission despite alleging the fact that the Petitioners were discriminated against vis-à-vis the Malwatta and Asgiriya Chapter of the Siam Nikaya,*
- ii) suppressed the proceedings conducted before the Human Rights Commission in the present application before Your Lordships' Court where both the Petitioner and intervenient petitioners were represented by Counsel on the application of the intervenient parties seeking to vacate the order dated 11-03-2024, and the fact that the said order was reserved by the Commission,*
- iii) unlawfully seek the intervention of Your Lordships' Court on the false and baseless premise that the Petitioner was subjected to discrimination against vis-à-vis the Malwatta and Asgiriya Chapter of the Siam Nikaya, and thereby*
- iv) have filed the present application failing to make the intervenient petitioners parties to this application in an attempt to surreptitiously seek the enforcement of the order by the Human Rights Commission dated 11-03-2024.⁸*

⁷ Vide paragraph 35 of the Written Submissions dated 31.07.2025.

⁸ Vide page 5.

Accordingly, the Intervenient-Petitioners have taken up the position that they are indispensable and proper parties to in the instant application in view of the factual matrix and the reliefs prayed for by the Petitioner, and that, the reliefs sought, if granted, would directly and adversely affect them and the rights, status, and institutional standing of the Malwatta and Asgiriya Chapters of the Siam Nikaya, as well as the broader interests of the Theravada Buddhist tradition in Sri Lanka. Thus, they submit that it is essential that they be heard before any decision is made by this Court in the instant application.

Opposing the intervention, the Petitioner has taken up the position that recommendations of the HRC marked 'P10' are the final determinations made by the Commission in respect of the complaint bearing no HRC/3704/23, in terms of the provisions of the Human Rights Commission Act, No. 21 of 1996 ("the HRC Act") which the 1st to the 5th Respondents are obliged in law to implement. In addition, the Petitioner has raised several legal objections, which are summarized in his written submission as follows;

- A. *the 1st and 2nd Intervenient Petitioners have no right and/or are not entitled to intervene as Parties in this Application, which is a Writ Application, as per the decisions of the Supreme Court and Your Lordships' Court;*
- B. *the said Intervenient Petitioners are not necessary parties to this application in any event, and as such, they have no locus standi to intervene;*
- C. *the Intervenient Petitioners have no right to be heard in this application before Your Lordships' Court even if they are aggrieved, as they are not entitled to obtain any relief in this application;*
- D. *as the Intervenient Petitioners have misrepresented matters to Your Lordships' Court, the two Petitions for Intervention are liable to be dismissed in limine; and,*
- E. *in any event, the Petition for Intervention filed by the 1st Intervenient Petitioner should be rejected and/or dismissed in limine, as the affidavit filed therewith has been signed on a date prior to the date of the Petition for Intervention, and is thus contrary to the Court of Appeal (Appellate Procedure) Rules 1990.⁹*

Legal Parameters for Intervention in Writ Applications

The authorities cited and relied upon by the parties in their written submissions reflect the divergence in the approaches adopted by the Superior Courts in dealing with interventions in writ applications. The two discernible approaches have been identified as the "strict approach" and "lenient approach" by His Lordship Sampath Wijeratne in **Lakshman Nanayakkara v. Land**

⁹ Vide Legal Submissions-paragraph 1.

Reform Commission and another,¹⁰ wherein the leading authorities on both approaches have been usefully identified and analyzed.

In this context, I now wish to briefly examine how the legal reasoning of the Superior Courts on this issue has evolved. In an early decision **Mahanayaka Thero, Malwatta Vihare v. Registrar General**,¹¹ intervention was allowed upon the basis that the intervenient was “vitally concerned in the matter” (per Soertsz, J.). On the contrary, in **M. D. Chandrasena and two others v. S. F. de Silva (Director of Education)**,¹² intervention was not permitted for the reasons that there were no rules made in Ceylon under the Courts Ordinance permitting interventions and the recognition of such a principle would “open the floodgates, as it were, to a torrent of similar applications, and thus impede the functioning of the Courts” (per Tambiah, J.). The reasoning that intervention cannot be allowed in writ applications in the absence of specific Rules formulated by the Supreme Court was followed in **Tyre House (Pvt) Ltd v. Director General Customs**¹³ (per Dr. Ranarajah, J.).

The issue of competence of the Court of Appeal to permit interventions in the absence of specific Rules of Court was also considered by this Court in **Harold Peter Fernando v. Divisional Secretary, Hanguanketha and two others**¹⁴ (per Marsoof, J. P/CA as his Lordship then was). Disallowing the application for intervention, the Court observed that the Court of Appeal Rules 1990 did not allow for third party interventions in writs, and that, although the Supreme Court had the discretion under Article 134(3) of the Constitution to grant any other person a hearing as may appear to the Court to be necessary, in the exercise of its jurisdiction under that Chapter, there was no such corresponding provision in the Constitution or other law relevant to the Court of Appeal. A Divisional Bench of this Court also considered such issue in **Weerakoon and another v. Bandaragama Pradeshiya Sabawa**.¹⁵ The Court (per Ranjith Silva, J.) followed the reasoning in **Harold Peter Fernando’s case** and referred to the absence of provisions for intervention in the Court of Appeal (Appellate Procedure) Rules 1990 and provisions similar to Articles 134(2) or 134(3) or section 18 of the Civil Procedure Code permitting the Court of Appeal to decide on controversial matters or disputes in facts.

The Court further observed the following;

If a person has sufficient interest, he himself can file an application for writ. Sufficient interest may not be always sufficient to maintain a writ application although it may entitle a party to file a civil action. Sufficient interest in the Intervenient petition cannot and will

¹⁰ CA Writ Application No. 444/2020, decided on 28.06.2023.

¹¹ (1937) 39 N.L.R. 186. It is noted that, as observed in later decisions, the Privy Council and not the Supreme Court was the Apex Court at the time.

¹² 63 N.L.R. 143. It is noted that, as observed in later decisions, the Privy Council and not the Supreme Court was the Apex Court at the time.

¹³ CA Writ Application No. 730/95, decided on 05.06.1996.

¹⁴ [2005] B.L.R. 120.

¹⁵ [2012] B.L.R 310.

not legalize the illegal acts of the Respondent when those decisions and actions are changed by the Petitioner as illegal.

The reasoning in **Weerakoon's case** has been followed in several cases including **Janaka Lakshman Pallewala v. Dr. Ajith U. Mendis, Director General of Health Services and others**,¹⁶ **Makavitage Gerard Perera v. R.P.R. Rajapaksha and others**,¹⁷ **Meditek Devices (Private) Limited v. Director, Medical Technology and Supplies, and others**,¹⁸ **Dr. Shayamal Buddjima Jayasinghe v. Anura Jayawickrama, Secretary, Ministry of Health and others**,¹⁹ **K. Gunapalan v. Hon. Minister of Rural Economic Affairs**,²⁰ **Wimalasena v. Wickramage and others**.²¹

In relation to the line of authorities on the "strict approach," it is pertinent to consider the observations made in **Lakshman Nanayakkara's case**,²² to the following effect;

In this backdrop, I observe that the Divisional Bench that delivered the judgment in Weerakoon case and Their Lordships who followed the said decision in their subsequent judgments have lost sight of the judgment of the Supreme Court in the case of J.S. Dominic v. Hon. Jeevan Kumarathunga, Minister of Lands and others (S.C.).²³ In this case, His Lordship Saleem Marsoof J., (N.G. Amaratunga J. and C. Ekanayake J. agreeing) has departed from His Lordship's earlier decision in the case of Harold Peter Fernando and allowed two parties to intervene in an application for a writ of certiorari.

In the former case, special leave to appeal was granted, inter alia, on the specific question of whether the Court of Appeal erred in dismissing the application to add the two named parties. Answering the said question, His Lordship Saleem Marsoof J., analysed the relevant facts extensively and concluded that the Court of Appeal erred in not allowing the intervention.

It is important to note that His Lordship did not address the issue of lack of rules for intervention in this decision, which His Lordship did in the previous decision.

No doubt can exist, J.S. Dominic v. Hon. Jeevan Kumarathunga, Minister of Lands and others (S.C.) being a Supreme Court judgment is a judicial precedent binding upon this Court. However, in my view, this is not a case where the general question of the intervention of the parties in writ applications is discussed and therefore cannot have a

¹⁶ CA Writ Application No. 453/2007, decided on 21.03.2013.

¹⁷ CA Writ Application No. 248/2015, decided on 20.01.2017.

¹⁸ CA Writ Application No. 99/2014, decided on 26.01.2017.

¹⁹ CA Writ Application No. 408/2015, decided on 11.01.2017.

²⁰ CA Writ Application No. 431/2016, decided on 07.06.2018.

²¹ CA Writ Application No. 173/2015, decided on 03.07.2018.

²² See note 10.

²³ S.C. Appeal No. 83/08, S.C. Minutes dated 07.12.2010.

*general application. Yet, this is an authority for the proposition that parties can be added in writ applications.*²⁴

In the said case, although the application for intervention was disallowed on the facts, the Court, citing **Porakara Mudiyansele Aruna Samantha Kumara v. T. A. C. N. Thalangama, Returning Officer, Gampola Urban Council**,²⁵ concluded that allowing intervention petitioners is a matter of fact in each case.²⁶

In any event, the practice of this Court relating to interventions even after the decision in **Weerakoon's case** has not been uniform. Interventions have been permitted by this Court in writ applications adopting a "lenient approach," both before and after **Weerakoon's case**. In **Government School Dental Therapist Association v. Director General of Health Services and others**,²⁷ the Court allowed intervention and held as follows;

Each of the Intervenant Petitioners in the present case cannot be said to be a different "meddlesome busybody" or a "meddlesome interloper" who does not have a sufficient interest in the pending application. I would therefore adopt the liberalized rules in regard to the standing of a party entitled to seek a remedy to the case of an intervenient who similarly has a sufficient interest in the subject matter of pending writ application and on that basis to permit the intervention.

Similarly, in **Jayawardhane v. Ministry of Health and others**,²⁸ whilst permitting the intervention, the Court held as follows (per Gooneratne, J.);

What the court at this point of time needs to consider is whether the intervenient party is a necessary party and having such a party in the case would in all circumstances assist court in considering the merit and demerits of the application before court.

Such decision was followed in **Jetwing Hotel Management Service (Pvt) Ltd v. Securities and Exchange Commissioner and others**.²⁹ The reasoning in **Weerakoon's case** was not followed and intervention was allowed in **Teejay Lanka PLC v. Centre for Environmental Justice (Guarantee Limited)**³⁰ and **A.H.S.D. De Silva v. B.G.I. Kalani Hemali and others**.³¹ In the **Teejay Lanka PLC case**, the Court observed as follows (per Samarakoon, J.);

²⁴ See note 10, pp 13-14.

²⁵ CA Writ Application No. 238/2020, decided on 21.5.2021 (per Obeyesekere, J.).

²⁶ See note 10, pp 15-16.

²⁷ CA Writ Application No. 861/93, decided on 25.07.1994.

²⁸ CA Writ Application No. 978/2008, decided on 21.05.2009.

²⁹ CA Writ Application No. 293/2009, decided on 31.05.2010.

³⁰ CA. Writ Application No. 340/2020, decided on 29.03.2022.

³¹ CA Writ Application No. 639/2023, decided on 03.05.2024.

The contention of this court, then, is that, if the decision maker is bound to hear all parties and to consider everything, why not the same applicable to the reviewing court, which looks at the correctness of the process of decision making?

The intervenient petitioner in this application has said in its written submissions, that its name is mentioned several times under the sub heading “The Subject Matter of this Application”.

It is also submitted that the relief sought by the petitioner has an impact in view of the prayers to the petition,

.....

This shows that the intervenient petitioner is not only a party affected, but also a party to be heard in coming to a decision on the legality of the process of decision making.

A similar approach was followed in ***Don Gregory Ajith Udugama v. The Commissioner General of Excise***,³² although intervention was refused on the facts. The Court held that (per Laffar, J.);

Having considered the Written submissions and the decisions of apex Courts with regard to this matter, it is the view of this Court that generally speaking, the intervention cannot be allowed in Writ Applications in the absence of specific rules formulated by the Supreme Court providing for the procedure permitting third parties to intervene in Writ Applications. However, if the intervenient Petitioner can establish the fact that the Court cannot arrive at a final determination without making him a party and/or his rights will be affected by the Petition filed by the Petitioner, the intervention can be allowed.

It is further observed that in ***Salinda Dissanayake and others v. Koralagamage Sydney Sunimal Kularatne and 2 others***,³³ intervention was permitted by the Supreme Court at the stage when special leave to appeal from a judgment of the Court of Appeal in a writ application was considered.

Upon consideration of the aforementioned decisions, I am of the view that neither the absence of specific Rules of Court permitting intervention nor the apprehension of “floodgates being opened” can be considered any longer as immutable barriers that preclude this Court from considering the application for intervention made by the Intervenant-Petitioners. I am further in agreement with the view expressed in ***Lakshman Nanayakkara’s case***³⁴ that allowing interventions is a matter of fact in each case, and that, if the Intervenant-Petitioners are able to demonstrate that they have “sufficient interest” in the outcome of the writ application, their intervention should be permitted.

³² CA Writ Application No. 152/20, decided on 17.05. 2023.

³³ SC Appeal No. 66/2020, SC Minutes dated 10.08.2023 (per Jayantha Jayasuriya, CJ).

³⁴ See note 10, pp 15-16.

Interests of the Intervenient-Petitioners in the Writ Application: Analysis

The position of the Intervenient-Petitioners is that they are indispensable and material parties to the instant application in view of the factual matrix and the reliefs prayed for by the Petitioner, and, that, the reliefs sought, if granted, would directly and adversely affect them and the rights, status, and institutional standing of the Malwatta and Asgiriya Chapters of the Siam Nikaya.

Rejecting such position, the Petitioner contends that the Intervenient Petitioners are not necessary parties to this application and that, as their rights and/or privileges will not be adversely affected at all by any decision made by this Court in the instant application. Thus, the Petitioner further contends that the Intervenient-Petitioners do not have *locus standi* to intervene in this application. I have already discussed such positions in greater detail in identifying grounds for intervention and the response thereto.

Accordingly, the Court will now analyze the nature of the Intervenient-Petitioners' involvement in the factual matrix of the instant application and interest in its outcome. In this context, I wish to clarify that, since the Petitioner has invoked the writ jurisdiction of this Court to implement recommendations made by the HRC ('P10'), the scope of inquiry before this Court includes proceedings held before the HRC which culminated in such recommendations as well.

It is observed that the complaint lodged by the Petitioner before the HRC ('P1') is for the alleged violation of Article 12(1) of the Constitution. Article 12(1) of the Constitution provides as follows;

12(1). All persons are equal before the law and are entitled to the equal protection of the law.

The concept of equality and equality before the law has been succinctly explained by Dr. Jayampathy Wickramaratne in *Fundamental Rights in Sri Lanka* in the following terms;

Equality before the law is a negative concept implying the absence of any special privilege in favour of any individual and the equal subjection of all classes to the ordinary law. Equal protection of the law is a more positive concept and implies equality of treatment in equal circumstances. Jennings found equality of treatment to be part of the principle of equality before the law. 'Equality before the law means that among equals, the law should be equal and should be equally administered, that like should be treated alike.' The object of both phrases, it is clear is equal justice.³⁵

Such concept has been judicially recognized by our Courts and the 1st Intervenient-Petitioner adverted to ***Wickramage Don Subadra v. Kotikawatte Mulleriyawa Pradeshiya Sabhawa and others***,³⁶ wherein the Supreme Court (per Samayawardhena, J.) observed that;

³⁵ Jayampathy Wickramaratne, *Fundamental Rights in Sri Lanka* (3rd edn, Stamford Lake, 2021) 442.

³⁶ SCFR Application No. 247/2016, SC Minutes dated 05.08.2024.

It must also be mentioned that equality before the law and equal protection of the law cannot be understood or applied in a purely abstract or strictly literal sense. Not all persons shall be treated alike, but all persons similarly circumstanced shall be treated alike. Equality must be ensured among equals, not unequals. Any attempt to ensure the latter would defeat the very purpose that Article 12(1) seeks to achieve.

In essence, the Petitioner's complaint before the HRC is one of discrimination and unequal treatment. In fact, the Petitioner's entire claim and entitlement to the relief is premised on the footing that the Malwatta and Asgiriya Chapters of the Siam Nikaya and the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa are "equals." However, the Petitioner has failed to cite the Ven. Mahanayake Thero or any representative body of the said Nikaya or the Intervient Petitioners of the said Malwatta and Asgiriya Chapters as party-respondents either before the HRC or in the instant application in which the Petitioner is seeking to have the recommendations of the HRC implemented. The direct consequence of such conduct on the part of the Petitioner is that he has effectively precluded the parties, based on whose status and treatment the allegation of discrimination is made; from contesting the veracity of his claim and demonstrating that the Malwatta and Asgiriya Chapters and the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa are not "equals" and, as such, that they should not be "treated equally."

Notwithstanding the Petitioner's failure to cite the Intervient-Petitioners as respondents, as pointed out by them, the HRC was empowered in terms of section 18 of the HRC Act to add them as parties or obtain their evidence, if they so wished. Section 18(1) provides as follows;

18. (1) The Commission shall, for the purposes of an inquiry or investigations under this Act, have the power-

(a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the Commission may think it necessary or desirable to procure or examine;

In this context, I also observe that the Respondents had informed the HRC at the inquiry sitting held on 24.10.2023 ('P4')³⁷ and in the letter addressed by the 3rd Respondent dated 30.10.2023 ('P6') that they were unable to decide the issue whether the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa should be recognized as a separate sect and that was a decision to be left to the Maha Sangha. The said 3rd Respondent's letter ('P6'), *inter alia*, states as follows;

ඒ අනුව ශ්‍රී ජයවර්ධනපුර කෝට්ටේ ශ්‍රී කලාණි සාමග්‍රි ධර්ම මහා සංඝ සභාව සෙසු නිකාය පාර්ශ්වයන්ගෙන් වෙන් වූ වෙනම ඒකකයක් ලෙස පිළිගැනීම ශාසනික වශයෙන් ගත යුතු තීරණයක් වේ. එය අනෙකුත් සියලු මහා නායක

³⁷ Vide observations of Commissioner (Development) of the Department of Buddhist Affairs at page 11 of the Inquiry Proceedings.

ස්වාමීන්වහන්සේලාගේ එකඟතාව මත සිදු කළ යුතු කරුණක් බව කාරුණිකව දන්වන අතර, ශාසනික සම්ප්‍රදායන් මත තීරණය කළ යුතු කරුණක් සම්බන්ධයෙන් මෙම දෙපාර්තමේන්තුවට මැදිහත් විය නොහැකි බව වැඩිදුරටත් කාරුණිකව දන්වා සිටිමි.³⁸

Similar sentiments had been expressed by the 2nd Respondent in his response under section 15(7) of the HRC Act ('P13') regarding proposed action to give effect to the recommendations ('P10'). Considering the ecclesiastical issues involved in the Petitioner's complaint, I am of the view that, at the very least, the participation of representatives of the Malwatta and Asgiriya Chapters would have been helpful to the HRC in clarifying such issues and arriving at a considered decision. However, despite having statutory authority to do so and being alerted to such matters, the HRC did not deem it fit to either add as parties or summon any representative or witness from either the Malwatta or Asgiriya Chapters or afford them an opportunity to be heard.

It is trite law that the duty to conduct a fair hearing is essential and indispensable to administrative decision-making. The scope of such duty has been steadily developed and expanded by our Superior Courts.³⁹ The Intervenant-Petitioners have drawn the attention of Court to a host of authorities on this issue, including decisions pertaining to intervention applications referred to above. In order to illustrate the scope and rigour of the duty to conduct a fair hearing, it would suffice to refer to two such decisions.

In **Jayawardena v. Dharani Wijayatilake, Secretary, Ministry of Justice and Constitutional Affairs and others**,⁴⁰ the Supreme Court (per Mark Fernando, J.) held that "it must give the party who may be affected by its decision an opportunity of being heard and of stating his case.... In other words, 'the essential requirements of justice and fair play' must be observed..." In addition, I have also considered the observations made by the Supreme Court regarding the rigour of such duty in **Sundarkaran V. Bharathi**.⁴¹

I am of the view that the denial of a hearing, as borne out by the aforementioned facts and circumstances, confers "sufficient interest" upon the Intervenant-Petitioners in the instant application to warrant their intervention. I further accept the position taken up by the Intervenant-Petitioners that they and the Chapters that they represent would be directly and adversely affected if the relief sought in the petition is granted.

³⁸ Vide observations on item (V).

³⁹ See **Splendour Media (Pvt.) Limited v. The Commissioner General of Labour and others**, CA Writ Application No. 102/2017, decided on 01.11.2019 (per Obeyesekere J).

⁴⁰ [2001] 1 Sri L.R. 132.

⁴¹ [1989] 1 Sri L.R. 46.

The Supreme Court in ***Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and others***⁴² has set out as to who would be a “necessary party” in an application for a writ of Mandamus in the following manner (per Amaratunga, J.);

(2) 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.

I am of the view that the Intervenant-Petitioners would fall within the category of “persons who would be affected by the issue of Mandamus” in the above formulation, and, as such should be considered as “necessary parties.”

Before I part with this judgment, I wish to address two issues related to “sufficient interest” and “necessary parties” arising from the ***Weerakoon’s case***.⁴³ One issue relates to the observation that, if a person has sufficient interest, he himself can file a separate writ application. Whilst such a course of action may be possible, I am of the view that the existence of such a possibility should not act as a barrier for a party seeking intervention if he/she has sufficient interest. Hence, I hold that the institution by the 2nd Intervenant-Petitioner of a separate writ application bearing no. CA WRIT 209/2025 challenging the legality and validity of the recommendations issued by the HRC (‘P10’) should not have any bearing upon the entitlement of the said party to seek intervention in the instant application.

The second issue concerns the impact of an objection relating to “necessary parties” by a Respondent upon the rights of an intervenient party. In this regard, I am not convinced that the possibility that a writ application may be dismissed for the want of “necessary parties” justifies refusing to permit a party with sufficient interest to intervene in such proceedings. If a party has sufficient interest in the application before Court, such party, rather than a third party, would be in the best position to pursue such interest.

Finally, regarding the Petitioner’s contention that the recommendations (‘P10’) is the “final step” and that no mediation or reconciliation is possible thereafter in terms of section 15(3) of the HRC Act, I am unable to agree with such proposition for several reasons. In the first instance, I observe that section 15(3) applies to “investigations” and no reference is made therein to “inquiries.” Furthermore, the HRC Act does not contain any statutory provisions conferring finality on recommendations. I am also of the view that sections 15(7) and 15(8) of the Act is adequately wide in scope to enable parties affected by a recommendation to engage with the Commission.

⁴² [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.

⁴³ See note 15

Conclusion and Orders of Court

For the reasons set out above, I allow the intervention-applications of the 1st and 2nd Intervenant-Petitioners. I further direct the Petitioner-Respondent to add them as party-Respondents into the instant application and issue formal notices to them within 02 weeks of the date hereof. No costs.

Applications for Intervention is allowed.

Judge of the Court of Appeal

Mayadunne Corea, J.

I agree.

Judge of the Court of Appeal