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, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. **Mr. M. S. M. Rasheed**
   103, Godawatte,
   Godapitiya, Akuressa.

2. **Mr. M. N. M. Nusair**
   102, New House, Godawatte,
   Godapitiya, Akuressa.

CA/ Writ Application No:

CA/WRT/160/2024

PETITIONERS

Vs.

1. **Mr. M. S. Ala Ahamed**
   Deputy Director,
   Muslim Mosque and Charitable Trusts or Wakfs
   180, T. B. Jayah Mawatha
   Colombo 10.

   And 15 Others

RESPONDENTS

1. **Mr. A. S. M. Naleer**
   No. 18/1, Moonamalawatta,
   Godapitiya,
   Akuressa.

   And 4 Others

ADDED RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J (President C/A)- Acting.**
K. P. FERNANDO

Counsel: Hejaaz Hizbullah with Shifan Maharoof & Chalana Perera, Instructed by Dilini Gamage for the Petitioners.

Shemanthi Dunuwille, S. C. for the 1st , 2nd, 4th, Respondents.

Sanjeewa Jayawardena, P. C. with Rukshan Senadeera, instructed by Amila Kumara for the 11th & 14th Respondents.

Faiszer Musthapaha, P.C. with Meheran Careem, instructed by M. M. F. Shafeen for the 12th & 13th Respondents.

Argued on: 02. 04. 2025, 04. 04. 2025, 08. 05. 2025

Decided on: 16. 06. 2025

MOHAMMED LAFFAR, J. (President of The Court of Appeal- Acting)

The Petitioners in their Petition are seeking the reliefs as follows;

1. A Writ of Certiorari quashing the purported appointment of the 11th to the 14th Respondents as Trustees of the Porwai Muhiyadeen Jumma Mosque by the Wakf Board (3rd to the 10th Respondents) as contained in the letter produced marked (P-9);
2. A Writ of Mandamus directing the Wakfs Board (3rd to the 10th Respondents) to appoint the Petitioners as Trustees of the Porwai Muhiyadeen Jumma Mosque in terms of the law;
3. A Writ of Prohibition restraining the 11th the 14th Respondents from functioning as Trustees of the Porwai Muhiyadeen Jumma Mosque, Godapitiya, Akuressa;

FACTUAL MATRIX

The contention of the Petitioners is that the trustees of the Muhiyadeen Jumma Mosque, Porwai had not been appointed to the mosque for 17 years and no financial records were maintained. While trustees are usually appointed for a term of three

years, only three out of the seven appointed trustees remained functional until the recent election. The Petitioners, claiming to be qualified under the Muslim Mosques and Charitable Trusts or Wakfs Act, No. 51 of 1956 as amended (hereinafter the "Wakfs Act"), submitted their names for consideration.

By letter dated 04.01.2024 (marked P2), the 1st Respondent communicated the Wakfs Board's decision to conduct elections. The Petitioners state that the election was held in the presence of officers from the Akuressa Police, Matara and Athureliya District Secretariats, the Department of Muslim Religious and Cultural Affairs, Grama Sevaka officers, and school principals. The 2nd Respondent officiated the election, which was conducted peacefully. The Petitioners were among the seven candidates receiving the highest number of votes, with the 1st and 2nd Petitioners ranking 6th and 7th respectively.

The Petitioners further aver that despite submitting the statutory forms marked P5, P6, and P7, the Petitioners did not receive letters of appointment. By letter dated 10.02.2024 (marked P8), they wrote to the 3rd Respondent, Chairman of the Wakfs Board, requesting issuance of the same. However, by letter dated 14.02.2024 (marked P9), the Wakfs Board appointed nine trustees, excluding the Petitioners.
The Petitioners contend that no reasons were provided for disregarding the election results, and that the decision marked P9 is *ultra vires*. They submit that under Section 14(1)(a) of the Wakfs Act, the Board was bound to appoint those elected.

The Hon. Attorney General, appearing for the 1st, 2nd and 4th Respondents, has contested the validity of the Constitution marked P2 and presented a version of events distinct from that of the Petitioners. It is contended that the 2nd Respondent, by report dated 31.01.2024 marked 1R2A (with the English translation marked 1R2B), informed the 4th Respondent of the incident which occurred on 25.01.2024, immediately following the election. According to this report, during the closing remarks of the election proceedings, the 2nd Respondent advised the newly elected trustees, most of whom lacked prior experience except for two, to seek the guidance of the outgoing trustees who had managed the mosque for 17 years.

It is the contention of the 1st, 2nd and 4th Respondents that this recommendation was met with hostility by the Petitioners. It is averred that the Petitioners, particularly the 2nd Petitioner, responded with abusive and disparaging language

aimed at the 2nd Respondent, Development Officer of the Department of Muslim Religious and Cultural Affairs, and the Wakfs Board. Among the statements said by the 2nd Petitioner are accusations of corruption, use of the terms to refer to the Wakf Board, and express rejection of the mosque Constitution. This conduct, the Respondents contend, amounted to misconduct and had the effect of lowering the esteem of the Wakfs Board and the Department in the eyes of the public.

Affidavits filed by the Development Officers of the Department (marked 1R3B and 1R3C) who participated in the election who were present at the mosque during the incident, corroborate the 2nd Respondent's account, attesting to the abusive conduct of the Petitioners and noting that police protection had to be sought as a result.

Subsequently, the Director of the Department submitted a Board Paper dated 13.02.2024 marked 1R4 to the Wakfs Board, recommending disciplinary action against those responsible and suggesting the appointment of proper persons from the elected members, including the possibility of increasing the number of trustees in accordance with clause 8.2 of the Constitution.

The Wakfs Board, having considered the 2nd Respondent's report (1R2A), the Director's report (1R4), and other related materials, including prior decision 3R2 dated 04.08.2016 and proceedings marked 3R5, concluded that the conduct of the 1st and 2nd Petitioners, who had secured the 6th and 7th highest votes respectively, rendered them unsuitable for appointment. It was determined that confirming their appointment would undermine public confidence in the Wakfs Board and the administration of the mosque. Consequently, the Board appointed 9 trustees pursuant to clause 8.2 of the Constitution, excluding the 1st and 2nd Petitioners, and issued the instrument of appointment marked P9.

OBSERVATIONS OF THIS COURT

Upon a careful consideration of the material placed before this Court, I am inclined to accept the position advanced by the Respondents and endorsed by the Wakfs Board, that notwithstanding the Petitioners having been elected, their subsequent conduct rendered them unsuitable for appointment as trustees of the mosque.

The foundational duty of the Wakfs Board, as the custodian of Wakf property, is not merely to facilitate the election process but to ensure that those who are ultimately

entrusted with the administration of such property are fit and proper persons capable of upholding the sanctity, discipline, and lawful governance of the Mosque. The mere fact of being elected does not, in and of itself, create an automatic or indefeasible right to be appointed as trustee, particularly where the conduct of an elected individual calls into question their ability to fulfill such a role in *bona fide*.

In the present matter, the Wakfs Board's determination that the Petitioners, specifically the 1st and 2nd Petitioners, should not be confirmed in office is supported by cogent evidence. The report of the 2nd Respondent marked 1R2B, the Board Paper marked 1R4, and the affidavits marked 1R3B and 1R3C collectively substantiate the allegation that the Petitioners engaged in rude, abusive, and intimidatory conduct towards the public officers who were overseeing the election. Notably, it is borne out in the affidavit marked 1R3A that the 2nd Petitioner directed derogatory and offensive remarks at the officials, including members of the Wakfs Board itself, thereby undermining the dignity and authority of the Board.

Such behavior, occurring within minutes of the election, raises concerns about the Petitioners' capacity to work collaboratively with religious and administrative authorities in the stewardship of Wakf property. The fact that the officers present were compelled to leave the premises under police protection heightens the gravity of the Petitioners' misconduct.

The Wakfs Board, as the statutory supervisory body over Mosques, bears a continuing statutory obligation to ensure that the trustees act with integrity and propriety. Where there is evidence of bad faith, disrespect, and public disparagement, the Board is not only entitled but also duty bound to withhold appointment, even if such individuals were successful at an election.

Clause 8.2 of the Constitution clearly empowers the Wakfs Board to appoint between 5 to 15 trustees. The Board has exercised its discretion under that clause to exclude the 1st and 2nd Petitioners and instead appoint 9 others from among the elected candidates. This decision was taken after due consideration of the circumstances and with the aim of safeguarding public confidence in the governance of the Mosque. In my view, such a course of action cannot be faulted in law or in principle.

FACTS ARE IN DISPUTE

In perusing the pleadings and materials placed before this Court, it becomes evident that there is a substantial and material dispute as to the facts surrounding the conduct of the Petitioners at the conclusion of the trustee election held on 25.01.2024. The Petitioners maintain that their conduct was not improper and contend that the decision of the Wakfs Board to exclude them from appointment was arbitrary. In contrast, the Respondents, relying on reports, translations, affidavits, and official communication, have alleged that the Petitioners, used abusive, derogatory, and intimidatory language against the public officers present, including members of the Wakfs Board.

The veracity of the events they purport to record, are contested. The question of whether the Petitioners' conduct amounted to a disqualifying lack of suitability for appointment cannot be determined without a full and thorough examination of the facts, including the oral evidence of those who were present. Such contested factual matters are ill suited to be resolved in a proceeding for prerogative relief.

In this regard, I am guided by the decision in ***Thajudeen v. Sri Lanka Tea Board***[1], where the Court of Appeal held that:

> *"Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue. Mandamus is pre-eminently a discretionary remedy… to be granted only when there are no other means of obtaining justice."*

Similarly, in ***Francis Kulasooriya v. OIC, Police Station Kirindiwela***[2], the Supreme Court reiterated:

> *"Courts are reluctant to grant orders in the nature of writs when the matters on which the relief is claimed are in dispute or in other words when the facts are in dispute."*

The Supreme Court in ***Dr. Puvanendran v. Premasiri***[3] also affirmed this principle, holding that:

[1] ([1981] 2 Sri LR 471)
[2] (SC Appeal No. 52/2021, SC Minutes of 14.07.2023)
[3] (SC Appeal No. 120/2013)

"The writ of mandamus is principally a discretionary remedy… The Court will issue a writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and (2) the function that is to be compelled is a public duty with the power to perform such duty."

Applying these principles to the present case, I am of the view that the disputed and controversial nature of the material facts dictates against the grant of prerogative relief. The proper forum for resolving such disputes, especially those requiring the testing of credibility through cross-examination, is by way of regular civil action.

In any event, even if the factual disputes were resolved in favour of the Respondents or the Petitioners, I find that the decision of the Wakfs Board not to appoint the Petitioners, notwithstanding their electoral success, is justified and lawful. The Wakfs Board, as the statutory body overlooking Mosques, bears a duty to assess not only the formal eligibility but also the practical and moral suitability of persons proposed for appointment as trustees.

SUPPRESSION OF THE CONSTITUTION MARKED 3R1 BY THE PETITIONERS

A further matter of serious concern arises from the Petitioners' failure to tender to this Court a copy of the Constitution governing the Mosque, marked 3R1 by the Respondents. This document is materially relevant to the dispute, as it outlines the framework under which the election of trustees was conducted and stipulates the Wakfs Board's role in appointments.

Instead of placing before Court the authentic version of the Constitution, the Petitioners filed a translation of a purported Constitution without disclosing or submitting the version officially filed of record with the Wakfs Board. That Constitution, marked 3R1, was subsequently filed by the 3rd Respondent along with their objections and is shown to have been signed by the Petitioners at pages 10 and 11, respectively, against Nos. 3 and 14.

Notably, the Petitioners have not denied the authenticity of document 3R1, nor have they provided any explanation as to why they failed to submit it to Court. The omission appears not to be inadvertent but deliberate. The Petitioners' silence in the

face of this suppression, particularly after the document was placed on record by the Respondents.

This suppression is further exacerbated by the conduct of the 2nd Petitioner, who, according to the report marked 1R2B, is recorded as having stated to the 2nd Respondent that they "*do not need any Constitution*." Moreover, the objections filed by the Hon. Attorney-General emphasize that the Petitioners have not only withheld the Constitution but have gone so far as to repudiate the very document under which they claim rights and by which they were selected.

The law is clear that suppression of material facts disentitles a party from seeking equitable or discretionary relief. In this regard, I am guided by the judgment of ***Fonseka v. Lt. General Jagath Jayasuriya***[4], where Salam, J. observed:

> "*Material facts are those (facts) which are material for the Judge to know in dealing with the application as made; materiality is to be decided by Court and not by the assessment of the applicant or his legal advisers.*"

The Petitioners, in this instance, made no attempt to obtain a certified copy of the Constitution or to seek leave of Court to file it at a later stage. I therefore hold that the deliberate suppression of the Constitution marked 3R1 is a fatal defect in the Petitioners' application. The lack of clean hands reflects a lack of *bona fides* and disentitles the Petitioners from the grant of prerogative relief, which remains an extraordinary and discretionary remedy to be invoked only by parties who approach Court with clean hands.

AVAILABILITY OF AN ALTERNATIVE REMEDY

In this context, I am guided by the reasoning adopted by the Supreme Court of India in ***Whirlpool Corporation v. Registrar of Trademarks, Mumbai***[5], where it was held:

> "*Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has the discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.*

[4] (2011) 2 Sri L.R. 372
[5] [(1998) 8 SCC 1]

However, the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely: (i) where the writ petition has been filed for the enforcement of any of the fundamental rights; (ii) where there has been a violation of the principles of natural justice; or (iii) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

Similarly, in ***Harbanslal Sahnia v. Indian Oil Corporation Ltd.***[6], the Indian Supreme Court held:

"In an appropriate case, in spite of the availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is a failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

Our own jurisprudence has echoed this principle of judicial restraint in the face of available alternative remedies. In ***Somasunderam Vanniasingham v. Forbes and Others***[7]**,** Bandaranayake, J. observed:

"As I have said, there is no rule requiring alternative administrative remedies to be first exhausted without which access to review is denied. A Court is expected to satisfy itself that any administrative relief provided for by statute is a satisfactory substitute to review before withholding relief by way of review."

Similarly, in ***Ishak v. Laxman Perera***[8], it was held that:

"Where there is an alternative procedure which will provide the applicant with a satisfactory remedy, the Courts will usually insist on an applicant exhausting that remedy before seeking judicial review. In doing so, the Court is coming to a discretionary decision."

The underlying rationale for this approach is not merely procedural, it is grounded in respect for legislative intent and administrative autonomy. Requiring litigants to first exhaust the statutory remedies promotes judicial economy and prevents the

[6] [(2003) 2 SCC 107]
[7] [1993 (2) SLR 362]
[8] [2003 (3) SLR 18]

extraordinary jurisdiction of this Court from being invoked in matters that fall squarely within the purview of specialized forums established by statute.

However, it must be emphasised that the existence of an alternative remedy does not constitute an absolute bar to invoking the writ jurisdiction of this Court. But where such remedy is available, two preconditions must be satisfied before this Court may exercise its discretion to intervene:

1. The Petitioner must provide cogent and satisfactory reasons for failing to exhaust the alternative remedy; and
2. The Petitioner must establish that the alternative remedy is not equally efficacious or adequate.

Unless these two thresholds are met, the Court will not be inclined to exercise its extraordinary jurisdiction in favour of the Petitioner.

In the present matter, the Petitioners have failed to invoke or exhaust the alternative remedies provided under the Muslim Mosques and Charitable Trusts or Wakfs Act. In particular, Section 14(1A) of the said Act empowers the Wakfs Board to revoke the appointment of a trustee at any time if it is satisfied that the appointment was made by reason of a mistake of law or fact, and Section 9H which allows the aggrieved party to make an appeal to the Wakf Tribunal. No reasons have been furnished by the Petitioners as to why this statutory recourse was not pursued.

Given the above, the availability of an adequate and effective alternative remedy before the Wakfs Board and the Wakfs Tribunal further militates against the exercise of writ jurisdiction by this Court. The Petitioners remain at liberty to invoke these specialized mechanisms and ventilate their grievances through a proper fact finding inquiry.

FUTILITY OF RELIEF SOUGHT

It is further contended that the Petitioners have challenged only the instrument of appointment marked P9, but have failed to seek the quashing of the Board's decision marked 3R5, which forms the legal foundation and basis for P9. As rightly emphasized by learned Counsel for the 11th and 14th Respondents, this omission is not merely procedural, it goes to the heart of the relief sought. Therefore, even if P9 were to be quashed, the underlying decision in 3R5 would remain intact, rendering the relief entirely ineffective. In essence, no consequential or practical benefit would flow to the Petitioners even upon a favourable order.

In administrative law, courts have consistently refused to issue writs where such relief would be futile, that is, where the writ, even if granted, would serve no useful purpose, and the complaint would ultimately fail to state a claim upon which effective relief can be granted.

The jurisprudence on this issue is both clear and well established in ***Samsudeen vs Minister of Defence and External Affairs***[9], L. B. De Silva J. held:

> *"The issue of a writ of mandamus is within the discretion of Court and will not be issued if it will be futile to do so... A writ of mandamus will not be issued if it will be futile to do so and no purpose will be served."*

In ***Eksath Engineru Saha Samanya Kamkaru Samithiya Vs. S. C. S. de Silva***[10], Samerawickrame J. observed:

> *"Parties obviously cannot be ordered to do what they are not qualified to do and are therefore unable to do."*

In ***Sethu Ramasamy vs Moregoda***[11], Gunasekara J. held:

> *"A mandamus will not be granted when it appears that it would be futile in its result."*

And in ***Selvamani vs Dr. Kumaravelupillai and Others***[12], Sisira de Abrew J. stated:

> *"I have already pointed out that issuing a mandamus would be futile in this case. The application of the petitioner for writ of mandamus should fail on this ground alone."*

In the present matter, the failure of the Petitioners to impugn 3R5, which directly authorizes the appointment under P9, renders the application defective and incapable of yielding any practical or meaningful outcome. The Court would, in effect, be exercising its discretionary jurisdiction in vain.

FAILURE TO NAME THE NECESSARY PARTIES

It is a well established principle of administrative law that any person whose rights may be directly affected by the outcome of a writ application must be made a party to the proceedings. This requirement is not merely procedural, but one that flows

[9] (63 NLR 430)
[10] (73 NLR 260)
[11] (63 NLR 115)
[12] (C.A. Appl. No. 45/2004)

from the principles of natural justice. In the present case, it is common ground that the election held resulted in the appointment of nine trustees. However, only five of those trustees have been named as Respondents before this Court. The remaining four trustees, though directly affected by the relief prayed for in this application, have not been made parties.

The law on this point is trite. In ***Hatton National Bank PLC v. Commissioner General of Labour and Others***[13], Janak De Silva J. emphasized that any person whose rights are affected by an order that the Petitioner invites Court to make must be afforded an opportunity of being heard. The rule is that all those who would be affected by the outcome of an application should be made respondents to such application.

This position was further affirmed in ***Rawaya Publishers and Others v. Wijedasa Rajapakshe, Chairman, Sri Lanka Press Council and Others***[14], where it was held that in the context of writ applications, a *necessary party* is one without whom no order can be effectively made. The absence of such parties renders the petition procedurally defective and liable to be dismissed in limine.
The Supreme Court in ***Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and Others***[15], per Amaratunga J., set out two cardinal rules in this regard. First, the person or authority whose decision is sought to be quashed must be made a Respondent. Second, those who would be adversely affected by the outcome of the writ application must also be made respondents. A failure to do so is *fatal* to the maintainability of the application.

In the present case, any order of this Court would undoubtedly affect all nine trustees appointed at the election. As such, the omission to name four of them as Respondents constitutes a fatal defect, depriving those individuals of their right to be heard, and preventing this Court from making an effective and complete adjudication of the matter.

[13] [CA (Writ) Application No. 457/2011, CA Minutes of 31st January 2020]
[14] [2001] 3 Sri LR 213
[15] [2011] 2 Sri LR 258

CUSTOMARY PRACTICES AND VALIDITY OF CONSTITUTION MARKED 3R1

Under Section 14(1)(a) of the Muslim Mosques and Charitable Trusts or Wakfs Act, the Wakfs Board is required to confirm and appoint trustees who have been selected or nominated according to the *practices, rules, regulations or other arrangements* in force for the administration of a mosque. This provision gives statutory recognition to the past or customary practices of individual mosques concerning trustee appointments. While Section 14(1)(a) does not mandate the existence of a formal Constitution, in practice, such a document can serve as a useful record to evidence and clarify the past practices followed by a particular mosque.

The Petitioners rely on a Constitution marked 3R1, which they assert reflects the past practices of the mosque in question. However, the Hon. Attorney-General has taken a preliminary objection regarding the validity of this document. It was submitted that for a mosque Constitution to be considered valid and enforceable, it must undergo a series of procedural steps:

> (a) it must first be submitted to the Wakfs Board for provisional approval,
> (b) thereafter it must be displayed at the mosque to enable members of the congregation to raise objections within a stipulated period,
> (c) any objections or the absence thereof must be formally communicated to the Board, and
> (d) the Wakfs Board must thereafter grant final approval.

Although these procedural steps are not expressly provided for in statute, I find them to be both reasonable and consistent with the intent behind Section 14(1)(a). The process ensures transparency, participation of the congregation, and safeguards against unilateral or unauthorized amendments to governing documents. Furthermore, as a matter of good practice, I would observe that each page of the Constitution ought to bear the signatures of the relevant parties and the official 'approval' seal of the Wakfs Board. This is to avoid future disputes, particularly when the individuals involved in drafting the Constitution are no longer available to attest to its authenticity or procedural compliance.

Having examined the material before me, I am not satisfied that the document marked 3R1 satisfies the threshold necessary to establish that it reflects the mosque's

past practices as the Constitution 3R1 does not bear the seal of approval of the Wakfs Board. More importantly, the Petitioners have failed to annex any contemporaneous minutes, letters, or Board proceedings evidencing that this Constitution was ever considered or formally approved by the Board. It is not the absence of the seal per se that renders the document invalid, but the complete lack of proof of its adoption with the knowledge and consent of the congregation, as would be expected under the procedure outlined above.

Furthermore, the last directive of the Wakfs Board regarding the appointment of trustees is dated 04.08.2016, marked 1R1, which called for an election or selection to be held. However, the Constitution 3R1 is dated 22.12.2023, more than seven years later. This considerable lapse of time is unexplained by either the Petitioners or the Respondents. If the Board had, as of 2016, ordered an election or selection due to the absence of clarity on the method of trustee appointment, it is questionable how a document adopted seven years later could be said to represent a pre existing past practice. This casts serious doubt on the authenticity of 3R1 as a record of historical custom.

Further the constitution 3R1 purports to permit each voter to cast seven votes, one for each candidate. This method resembles practices in parliamentary or local government elections but is uncharacteristic of customary elections for mosque trustees, where ordinarily one person has one vote. If such a voting practice did indeed exist as a matter of custom, then Section 14(1)(a) would recognize it. However, in the absence of cogent oral or documentary evidence demonstrating that this was the historic method of election used at this particular mosque, I find that the election held under 3R1 does not conform to established practice. It appears that both the trustees and the Wakfs Board have erred in conducting an election in a manner that lacks proven customary basis.

Finally, the absence of any documentation to show that the congregation was consulted or made aware of the adoption of 3R1 undermines its legitimacy. Section 14(1)(a) requires that trustees be confirmed based on existing practices known to the community. A document that appears unilaterally drafted or introduced without consultation with the congregation cannot be treated as a reliable reflection of those practices.

For all the above reasons, I find that the Petitioners have failed to establish that the Constitution marked 3R1 reflects the past practices of the mosque. As such, the decision of the Wakfs Board marked P2, which authorized the holding of the election on the basis of this Constitution, is legally unsustainable.

It is well established that a decision founded on an invalid or non-existent basis is a nullity in law. In ***Kumara v. National Gem and Jewelry Authority***[16], Samayarardhena J. cited with approval the dictum of Lord Denning in ***Macfoy v. United Africa Co. Ltd.***[17] states as follows;

> "*If an act is void, then it is in law a nullity. It is not only bad, but incurably bad... every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse*."

This principle has been repeatedly endorsed by our Courts, including in ***Rajakulendran v. Wijesundera***[18], ***Sirisena v. Kobbekaduwa***[19], and ***Leelawathie v. Commissioner of National Housing***[20].
Accordingly, I hold that the election conducted under the Constitution 3R1, and the Board's decision P2 authorising such an election, are void in law. The election process itself is vitiated due to lack of clarity and proof of adherence to the mosque's past practices, as required under Section 14(1)(a).

For the foregoing reasons, this Court finds that the Petitioners have failed to disclose material facts, have not named all necessary parties before this Court, is futile and Petitioners have not exhausted their statutory alternative remedy available under the provisions of the Wakfs Act. These lapses are fatal to the maintainability of this application. Accordingly, the Petitioners' application is hereby dismissed.

However, in the interest of ensuring good governance and transparency in the administration of mosques, I direct the Wakfs Board to conduct a comprehensive inquiry into the method of election adopted in respect of the Mosque. The status quo is to remain until the conclusion of this inquiry in order for the Mosque to function.

[16] SC/MISL/04/2014 (decided on 07.02.2025)
[17] [1961] 3 All ER 1169 at 1172
[18] [1982] 1 Sri Kantha LR 164
[19] (1978) 80 NLR 1
[20] [2004] 3 Sri LR 175

Upon the conclusion of such inquiry, the Wakfs Board is further directed to re hold the election in accordance with the findings and directions issued as a result of the said inquiry.

Application dismissed. No costs.

President of the Court of Appeal (Actg)

K. P. FERNANDO, J

Judge of the Court of Appeal