

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

In the matter of an application for Contempt of
Court under Article 105 (3) of the Constitution of
the Democratic Socialist Republic of Sri Lanka.

CA-COC-04-24

CA(Writ) Application No. 689/23

Pannipiti Arachchige Don Buddika Priyankara
No. 146, School Lane
Halpita, Polgasowita

Petitioner

Vs.

- 1. University of Kelaniya**
- 2. Prof. Nilanthi de Silva**
Vice Chancellor
- 3. Prof. M.M. Gunthilaka**
Dean. Faculty of School Sciences
- 4. Prof. J.M.D. Ariyaratna**
Dean/ Faculty of Graduate Studies
- 5. Dr. P.G. Wijayarathna**
Dean, Faculty of Computing and Technology
- 6. Prof. S.R.D. Kalingamudali**
Dean. Faculty of Science
- 7. Prof. W.M. C. Bandara wanninayake**
Dean, faculty of Com. & management Studies
- 8. Mr. U.S. Senarath**

Dean Faculty of Humanities

9. Prof. S.J. de S. Hewavisenthi
Dean, Faculty of Medicine
10. Rev. Walamiyyawe Gnanarathana thero
11. Prof. H. Abeygunawardena
12. Prof. Ranjith Arthanayake
13. Mrs. Mary T. Dickman
14. Emeritus Professor Kalyani Perera
15. Mr. Siri Ranasinghe
16. Mr. Waruna Dhanapala
17. Anuja Premarathna, PC
18. Mr. L.E. Susantha Silva
19. Mr. Cyril Suduwella
20. Mr. Udaya Ranjith Senavirathne
21. Prof. S.S. Weligamage
22. Prof. W.M, Semasinghe
23. Mr. K.K.K. Dharmathilaka
The registrar
24. Prof. R. M. P.F. Ratnayake
25. R.H. Upul Jayantha
26. Mr. Podduwage Diwanka Randula

All of

C/O The Registrar

University of Kelaniya

Kelaniya

27. Deneththi Raveen Poornika Padmasena
Nio. 115/96, Sirimal Uyana
Indigolla
Gampaha

Respondents

And Between

Pannipiti Arachchige Don Buddika Priyankara
No. 146, School Lane
Halpita, Polgasowita

Petitioner-Petitioner

Vs.

1. University of Kelaniya

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C/O The Registrar
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Nio. 115/96, Sirimal Uyana
Indigolla
Gampaha

Respondents-Respondents

Before : N. Bandula Karunarathna, P/CA, J.
B. Sasi Mahendran, J.

Counsel: K.G. Jinasena with Abeywickrama for the Petitioner
Rajika Aluwihare, SC for the Respondents.
Anusha Mallikarachchi for the Respondents

Supported On: 29.11.2024

Written

Submissions: 18.12.2024 (By the Petitioner)

On 17.12.2024 (by the Respondents)

Order On: 28.01. 2025

ORDER

B. Sasi Mahendran, J.

This is an application made in terms of Article 105 (3) of the Constitution.

The Petitioner instituted this application by petition dated 26th January 2024 seeking *inter alia* a rule to be issued in the first instant, on the 2nd and 23rd Respondent-Respondents to show cause as to why the 2nd and 23rd Respondent-Respondents should not be punished by this Court for committing the offence of contempt of court by acting intentionally and deliberately to contempt the authority of this Court by the failure to table and/or convey the content of the Order marked X2, made in CA (Writ) application No. 689/2023, to the members of the Governing Council at its 521st meeting held on 12th December 2023 and to punish the said Respondents for the said offence of contempt of court.

The Petitioner states that on 6th November 2023, the Petitioner filed the writ application No. CA (Writ) 689/2023 before this Court against the Respondents impugning inter alia a decision to appoint the 27th Respondent for the post of Lecturer (Probationary) in the Department of Drama, Cinema and Television of the 1st Respondent University overlooking the Petitioner.

The Petitioner further states that when the matter was supported on 11th December 2023, the Counsel appeared for the Respondent stated that she has no adequate instructions to assist the Court but informed the Court that the 27th Respondent had assumed duties as a Lecturer (Probationary). Accordingly, this Court made the Order marked X2 which states as follows:

“In the circumstances the Court was of the view an order to maintain status quo should be issued. Accordingly, 1st to the 29th Respondents were directed not to make any decision based on the selection of the 27th Respondent to the post of Lecturer (Probationary) at its meeting scheduled to be held on 12/12/2023. However, this order has no impediment for the 27th Respondent to continue in his post.”

The main allegation made by the Petitioner is that having received the Order marked X2 made by this Court, the 2nd and 23rd Respondents had failed to table and/or convey the content of the same to the members of the Governing Council at its 521st meeting held on 12th December 2023 amounts to contempt of court.

The question is whether the Court has directed the 1st Respondent to table the said order before the Governing Council. The Respondents have taken the position in their written submission that, as per the document marked X4 which is annexed to the motion dated 18.06.2024, they have tabled the particular order at that meeting. In addition, the Registrar of the Court of Appeal by letter dated 11.12.2023 has informed the Respondents that the Court was of the view that the status quo should be maintained. According to the own submissions of the Petitioner, the 27th Respondent was appointed prior to this Order.

I see there is no contempt of Court against the said Respondents. I observe that, to issue notice, the Petitioner should establish a prima facie case for contempt. The allegation made by the Petitioner is that the Respondents have failed to table and/or convey the Order made on 11.12.2023 before the Council at its 521st meeting.

Has the Petitioner established prima facie evidence to satisfy this Court?

Pursuant to Article 105(3) of the Constitution, both the Supreme Court and the Court of Appeal of the Republic of Sri Lanka are designated as Superior Courts of record, vested with all corresponding powers. This authority encompasses the power to adjudicate cases of Contempt of Court, whether the act of Contempt is committed within the precincts of the Court or externally. Punishments for such Contempt can range from imprisonment to fines, or a combination thereof, as deemed appropriate by the Court.

In Oswald's, 'Contempt of Court' (3rd edition on page 6) notes:

"To speak generally, Contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigant or their witnesses during the litigation."

Re BRAMBLEVALE, Ltd, Lord Denning, M.R. 1969 (3) All E.R Page 1062 at 1063;

"A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by

showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him.”

According to His Lordship Arjuna Obeyesekera, J. in Kahapola Arachchige Prabhath, Anuradha Nilupul Fernando v. Urban Coucil Kesbewa and Others , CA/Contempt 05/2018 decided on 06.09.2019,

“ A Charge of Contempt of Court is a very serious allegation to be made against a person, and once this Court issues summons, such person is treated as an ‘Accused’ and penal sanctions follow if this Court finds such person ‘Guilty’ of the charge.

Hence, it is important that this Court exercises great caution prior to issuing summons on any person accused of being in Contempt of Court.

The question before us is whether the Petitioner has produced any evidence to this Court to consider that the offence appears to have been committed. This issue was considered in the following judgements.

R.A. Jayaratne v. Sirimavo R.D. Bandaranaike, 69 NLR 184, His Lordship H.N.G. Fernando, S.P.J. held that;

“The learned Deputy Solicitor-General appearing on notice from this Court has referred to the fact that for a long period, the practice of the Court has been that a Rule Nisi for contempt of Court is only issued if there is available evidence which can lead the Court to conclude that an offence appears to have been committed. In the instant case, the only material which might lead to the opinion that the first Respondent made the statements attributed to her is the newspaper report of a speech alleged to have been made by her. There is no affidavit before the Court nor any sworn testimony before the Court alleging that the first Respondent made these statements which are attributed to her. On this material there is no legal ground upon which to base a conviction for the alleged offence of contempt. We are therefore in agreement with the learned Deputy Solicitor-General that, in accordance with the practice of the Court, a rule should not now issue against the first-Respondent on the present application.”

In Media Image Ltd v. Dissanayake 2006 (3) SLR 215 at page 220, His Lordship Wimalachandra, J

“I am of the view that the principle laid down in the aforesaid cases shall apply to contempt proceedings. Therefore the Court, before issuing summons, must form an opinion as to whether sufficient grounds exist to issue summons under section 793 of the Civil Procedure Code. In order to form an opinion, the learned judge may examine the affidavit and other documentary evidence placed before the Court disclosing sufficient grounds upon which the contempt charge is framed. However in the case before this Court, the respondent has not affirmed to in the affidavit nor has he placed any evidentiary material to form an opinion that there are sufficient grounds to proceed against the petitioner.”

In the instant application, we hold that the Petitioner has failed to establish that the Respondents have failed to table the status quo Order at the Council’s 521st meeting which is tantamount to Contempt of Court.

Application is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna,J (P/CA)

I AGREE

PRESIDENT OF THE COURT OF APPEAL

