

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

*In the matter of an application for orders
in the nature of Writs Mandamus in terms
of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

CA / WRIT / 344/2024

Jayantha Prabhath Gamalathge
172/1A,
Stanly Thilakarathna Mawatha,
Nugegoda.

Petitioner

Vs

1. Thangavelu Devaraj
Kuruwanaganga Watta,
Moragala,
Kirilipane
2. Rasiah Chandrabose
23, Indian Housing Scheme,
Indolwatta,
Mawarala Division,
Gomila,
Mawarala.
3. B.A. Karuna
Kaballapola,
Wijayagama,
Beralapanathara

4. K.A. Wijesinghe
Kiruwanaganga Watta,
Moragala,
Kirilipana

5. Rev. Joseph Johnson
Vicar
Church of Divine Love
Urubokka

6. Fr. Wilson Gnanadass
Vicar
The Church of SS Mary & John
Nugegoda

7. Ven. Sunil Shantha Gunathilake
Archdeacon of Church of Ceylon – Galle
63, Lower Dickson Road,
Galle

8. Mr. Arun Gamalathge
Diocesan Secretary,
368/3A,
Buddhaloka Mw,
Colombo 07

9. Rt. Revd. Dushantha Rodrigo
The Bishop of Colombo
Diocese of Colombo
No. 368/3A,
Buddhaloka Mawatha,
Colombo 07.

10. Rev. Neville Perera
Assistant Curate,
Church of Divine Love,
Ginneliya,
Urubokka

11. Attorney General
Attorney General's Department
Colombo 12.

Respondents

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Lakshan Dias, AAL with Rifna Nijam, AAL
Instructed by Manisha Kumarasinghe, AAL
for the Petitioner.

Viron Corea, P.C. with Hiruni De Almeida,
AAL instructed by Manohari Pathirana, AAL
for the 7th, 8th and 9th Respondents.

Written Submissions on : 30.12.2025 for the 7th to 9th Respondents.
07.01.2026 for the Petitioner.

Decided on : 13.03.2026

K. Priyantha Fernando, J.(CA)

1. The Petitioner has invoked the jurisdiction of this Court under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka seeking an

order in the nature of a Writ of Mandamus mandating the Respondents, a member of the church of Ceylon, a body incorporated through an Act of parliament namely, the Church of Ceylon (Incorporation) Act No. 43 of 1998, to include the Petitioner's name in the electoral list of 2023 or disclose to him as to why a decision was taken to not include his name in the list.

2. After the hearing both parties on 21st November 2025, the Court permitted parties to tender written submissions on the Preliminary Objection taken by Learned Counsel on behalf of the 7th, 8th and 9th Respondents.

THE POSITION OF THE PETITIONER:

3. The Petitioner was a Parishioner of SS Mary and John Church Nugegoda from 1974. During his time of service, the Petitioner decided that he wanted to become a parishioner and member of the Church of Divine Love at Urubokka. In pursuance of his desire, the Petitioner opted to remove his name from the electoral roll of SS. Mary and John Church Nugegoda in compliance with Chapter II Part I Section 2 of the Constitution of the Diocese of Colombo, which sets out that:

“The electoral roll shall consist of the names of all commutant members of that congregation who are not less than eighteen years of age and whose names do not appear on the electoral roll of any other Church of the Church of Ceylon.”

4. Thus, the Petitioner's name was removed from the electoral roll of SS Mary and John Church, Nugegoda and a letter from the 6th Respondent was even sent to the 5th

Respondent stating that the Petitioner ceased to be a member of the Nugegoda parish with immediate effect.

5. Having been removed from the electoral roll of SS Mary and John Church Nugegoda, the Petitioner sought to be included in the first electoral list of the Church of Divine Love at Urubokka. However, despite having made several requests to the 5th Respondent to grant him membership to the Church of Divine Love, he was refused to be entered in the first electoral list of 2023.
6. The Petitioner then appealed to the Vicar in terms of Chapter II, Part I, Section 4 and 5 of the Constitution of the Diocese of Colombo and following the rejection of his appeal, lodged a further appeal to the Archdeacon to have his name included in the electoral list or informed as to why his name was not able to be included. However, the Archdeacon dismissed his application, replying that he saw no merit in it.
7. The Petitioner stated that the churches in Ceylon were governed by the Church of England ordinance No. 6 of 1885 which was later repealed by the Church of Ceylon Incorporation at No. 43 of 1998 and enabled those churches to manage their own affairs. Since the petitioner was of the view that the respondents are bound to follow the provisions set out in the Constitution of the Church of Ceylon as they have been established through statutory law of this country. Section 2 of the Church of Ceylon Incorporation Act No. 43 of 1998 reads as follows:

“(1) The Church of Ceylon shall consist of-

(a) the diocese of Colombo and Bishop of Colombo; and

(b) the diocese of Kurunegala and Bishop of Kurunegala;

(c) such other dioceses as may be created from time to time in accordance with the provisions of the constitution of the Church of Ceylon relating to the same, and the Bishops appointed for such Dioceses”

8. The Petitioner drew the attention of this court to Article 140 of the Constitutional Sri Lanka, which states that the Court of Appeal may “*inspect and examine the records of any Court of first instance or tribunal or other institution*” and grant according to law orders in the nature of writs.
9. The Petitioner argued that the correct test to assess whether a body can be scrutinized under writ jurisdiction was **looking into what kind of power is being exercised rather than whether the body is a state or non-state body**. In *Fernando v SLBC* (1996) 1 SLR 157 it was stated that this was the Court's intention when including the term “other institution” in the Constitution.
10. The Petitioner cited and relied on the cases of *Wijeysuriya v State Timber Corporation* 1982 1 SLR 171 and *Udamulla v Secretary, Ministry of Industrial Development* 1987 2 SLR 34 in which it was held that Bodies exercising statutory power which affect legal rights are amenable to writ jurisdiction.
11. The petitioner submitted that even Indian courts have held that the Writ of Mandamus is not confined to statutory authorities but can also be issued against public bodies that perform public duties; *Andi Mukta Sadgaru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsay Smarak Trust v V. R Rudani* (1989) 2 SCC 691; and the same was

noted in the UK, where in the case of *R v Chief Rabbi of the United Hebrew Congregations ex parte Wachmann* (1992) 1 WLR 1036. The courts accepted that where a decision has civil consequences, writ jurisdiction is applicable; *R (Shergill) v Khaira* (2014) UKSC 33.

THE POSITION OF THE 7th, 8th AND 9th RESPONDENTS:

12. The Respondents reiterated the position established in their limited objections and contended that the action of the Petitioner is not maintainable due to the 1st to 10th Respondents being bodies who do not exercise any executive or administrative power. It was the Respondent's contention that the provisions of the Church of Ceylon (Incorporation) Act No. 43 of 1998 merely dictates the internal functions of the respondent and thus have no relevance to an application made in terms of Article 140 of the Constitution.

ANALYSIS:

13. In the case of *Piyasiri v Peoples Bank* 1989 2 SLR 47, it was held that although the bank was subject to ministerial control, since it was not a public body and just a commercial bank, a Writ of Mandamus could not compel the board in any manner. It went further to hold that:
14. *“The Writ of Mandamus lies to compel a person or body to **perform public duties imposed on them by law**. Such duties may be imposed by statute, chartered common law*

or custom. It will not issue for the enforcement of merely private rights.” (emphasis added)

15. The same was held in the decision of *Mendis v Seema Sahitha Panadura Janatha Santhaka Pravahana Sevaya and others* (1995) 2 SLR 284, Justice S.N. Silva (as he then was) held that, “*Writs of Certiorari and Prohibition are instruments of Public Law to quash and restrain illegal governmental and administrative action. Similarly, the Writ of Mandamus lies to enforce the performance of a statutory duty by a Public Authority. They are instruments of judicial review of administrative action*”.

16. In *J.S. Dominic v. Minister of Lands*, SC Appeal No. 83/2008, SC Minutes of 07.12.2010 it was held that,

“...writs in the nature of Certiorari and Mandamus, which are granted by our courts ‘according to law’ as provided in Article 140 and 154(4)(b) of our Constitution, had their origins in English common law and were known as ‘prerogative writs’ as they were the means by which the Crown, acting through its courts, ensured that inferior courts or public authorities acted within their proper jurisdiction....”

17. In the case of *Galkandage Sahasara Sandeepa Perera v District Scout Commissioner and 7 others* SC FR 355/2018, decided on 20.05.2020 in which it was held that the definition of an ‘executive or administrative action’ is as follows:

“Firstly, such action should either be an action of the state or government itself or secondly, it should be an action of an organ, agency or instrumentality of the

government which is subject to governmental control and done in the course executing a governmental function.”

18. The court went further to hold that, “*On an application of the above criteria of the governmental instrumentality or agency test to be present case, it can be observed that as per the Ceylon Scout Council (Incorporation) Act, No. 13 of 1957, the Council’s share capital is not held by the State nor it is financed exclusively by the State; in fact there does not appear to be any financial commitment to the SLAS from the State apart from the routine annual government grant; it does not enjoy State conferred monopoly status; its management and policies are not pervasively controlled by the State; **it does not carry out public functions closely related to any governmental functions**; and it certainly is not a corporation to which a Department of the Government has been transferred....”* (the emphasis was added)

19. Thus, the respondent submitted that the decision to exclude the petitioner from the electoral roll of the Church of Divine Love is a purely **internal and ecclesiastical in nature and therefore outside the supervisory jurisdiction vested in this Court.**

20. Finally, the respondent cited the case of Trade Exchange Ceylon Limited versus Asian Hotels Corporation Limited 1981(1) SLR 67, wherein the Supreme Court held that although the government held shares and had contributed large amounts of capital to this public commercial company and was controlled by the by the Government, is a separate juristic person and its actions are not subject to review in an application for Writ of Certiorari. At page 76, Sharvananda J. (as he then was) stated as follows: “*the activities of private persons, whether natural or juristic, are outside the bounds of*

administrative law. A public commercial company like the Respondent, incorporated under the Companies Ordinance in which the Government or a Government sponsored Corporation holds shares, controlling or otherwise is not a public body whose decisions, made in the course of its business, can be reviewed by this court by way of Writ”

21. It appears that the mere fact of incorporation under an Act of Parliament does not, in law, transform the said Church or the Diocese of Colombo of the Church of Ceylon into an organ or instrumentality of the State, nor does it impose upon them any public-law duties enforceable by way of an order in the nature of a Writ of Mandamus.
22. The Court’s attention was also drawn to the fact that the Petitioner who is represented and advised by an officer of this Court (Attorney-at-Law) has nonetheless persisted in wasting the time and resources of this Court and caused inconvenience, expense and hassle to the Respondents by filing this application despite the total lack of jurisdiction for this Court to permit it to be maintained and its sheer futility.
23. Furthermore, it is the view of this Court that in the event the Petitioner sought to remove his name from the electoral roll of one church and join that of another, he ought to have clarified the probability of his acceptance prior to doing so. Additionally, the Petitioner has not disclosed to this Court his reasoning for wishing to switch to the Church of Divine Love at Urubokka from the SS. Mary and John Church Nugegoda, and as such even if the subject matter at hand was amenable to writ jurisdiction, it can be concluded that the Petitioner has not come to Court with clean hands.

24. Accordingly, I uphold the preliminary objection and dismiss the application with costs of Rs. 50,000/-.

Judge of the Court of Appeal

Hon. Rohantha Abeyesuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal