

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

In the matter of an application for Special Leave to Appeal to the Supreme Court in terms of Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka against the order of the Court of Appeal in CA (Writ) Application No. 411/2012 dated 03.01.2013.

Sumudu Kantha Hewage,
No. 38/7, Pokuna Road,
Oruthota,
Gampaha.

INTERVENIENT-PETITIONER-PETITIONER-APPELLANT

-Vs-

Dr. Upathissa Atapattu Bandaranayake Wasala Mudiyanse
Ralahamilage Shirani Anshumala Bandaranayake.

Residence of the Chief Justice of Sri Lanka
No. 129, Wijerema Mawatha,
Colombo 07.

Presently at: No. 170, Lake Drive, Colombo 08.

PETITIONER-RESPONDENT-RESPONDENT

-Vs-

1. Chamal Rajapakse,
Speaker of Parliament,
Parliament of Sri Lanka,
Sri Jayawardenepura, Kotte.
2. Anura Priyadarshana Yapa,
Eeriyagolla,
Yakawita.
3. Nimal Siripala de Silva,
No. 93/20, Elvitigala Mawatha,
Colombo 08.
4. A. D. Susil Premajyantha,
No. 123/1, Station Road,
Gangodawila, Nugegoda.
5. Rajitha Senaratne,
CD 85, Gregory's Road,
Colombo 07.

SC Appeal No. 114/2013

SC (SPL) LA Application No. 23/2013

CA (Writ) Application No. 411/2012

6. Wimal Weerawansa,
No. 18, Rodney Place,
Cotta Road, Colombo 08.
7. Dilan Perera,
No. 30, Bandaranayake Mawatha,
Badulla.
8. Neomal Perera,
No. 3/3, Rockwood Place,
Colombo 07.
9. Lakshman Kiriella,
No. 121/1, Pahalawela Road,
Palawatta, Battaramulla.
10. John Amaratunga,
No. 88, Negambo Road,
Kandana.
11. Rajavaritham Sampathan,
No. 2D, Summit Flats,
Keppitipola Road,
Colombo 05.
12. Vijitha Herath,
No. 44/3, Medawaththa Road,
Mudungoda, Miriswaththa,
Gampaha.
13. W.B.D. Dassanayake,
Secretary General of Parliament,
Parliament Secretariat,
Parliament of Sri Lanka,
Sri Jayawardenapura, Kotte.
14. The Attorney General,
Attorney General Department,
Colombo 12.

RESPONDENTS-RESPONDENTS-ESPONDENTS

Before

:

Hon. Saleem Marsoof, PC., J.
Hon. Chandra Ekanayake, J.
Hon. Sathya Hettige, PC., J
Hon. Eva Wanasundera, PC., J and
Hon. Rohini Marasinghe, J.

Counsel : Nigel Hatch, PC, with S. Galappathi and Ms. S. Illangage for the Intervenient-Petitioner-Petitioner-Appellant.

M.A. Sumanthiran with Viran Corea and Niran Ankatell for the 11th Respondent-Respondent-Respondent.

J.C. Welimuna with Viran Corea for the 12th Respondent-Respondent-Respondent.

Shavindra Fernando, PC, Addl. SG, with Sanjay Rajaratnam, DSG, Nerin Pulle, SSC, and Manohara Jayasinghe, SC for the 14th Respondent-Respondent-Respondent.

Argued on : 20.12.2013

Decided on : 24.03.2014

SALEEM MARSOOF J.

This is an appeal against the order of the Court of Appeal dated on the 3rd January 2013 by which the said court refused an application made by the Intervenient-Petitioner-Petitioner-Appellant (hereinafter referred to as 'the Appellant') to intervene into CA (Writ) Application number 411/2012 which had been filed by the then incumbent Chief Justice Hon. (Dr). Upathissa Atapattu Bandarnayake Wasala Muduyanse Ralahamilage Shirani Anshumala Bandarnayake, (hereinafter referred to as 'Hon. (Dr.) Bandarnayake') against Hon. Chamal Rajapakse, Speaker of Parliament, and 12 others, seeking a writ of *certiorari* to quash the report and findings of the Parliamentary Select Committee (PSC) which had been appointed by the 1st Respondent-Respondent-Respondent to consider the allegations made against Hon. (Dr.) Bandarnayake, and an order in the nature of prohibition to restrain further steps being taken pursuant to the notice of resolution in terms of Article 107(2)and (3) of the Constitution. The said application was made by the Appellant on the basis that the Appellant is a concerned member of the public and represented the best interests of the public at large, and in particular asserted that the Court of Appeal was bereft of jurisdiction to entertain or to determine the writ application filed by Hon. (Dr.) Bandarnayake.

The only question on which this court granted special leave to appeal to the Appellant was set out in paragraph 19(c) of the petition dated 7th February 2013 filed by the Appellant, which was as follows:-

Has the Court of Appeal erred in law in not allowing the Appellant to intervene in CA (writ application) no 411/2012 having regard to the Petitioner submitting to the Court of Appeal that it had no jurisdiction to entertain and/or hear and/or determine the said application?

Mr Nigel Hatch PC., has emphasised that the Appellant had an interest in the protection and the fostering of the independence and integrity of the judiciary, and that the refusal of the application of the Appellant to intervene in the proceedings that were then pending in the Court of Appeal amounted to a travesty of the law. He also submitted that had the Appellant been allowed to intervene, the Court of Appeal would not have exceeded its jurisdiction conferred by Article 140.

By the impugned order of the Court of Appeal dated 3rd January 2013, the applications of the Appellant and another person (who has not appealed against the order of the Court of Appeal) to intervene into the then pending proceedings in CA (Writ) Application No. 411/2012, were refused on certain grounds that would appear from the passage of the impugned order of the Court of Appeal quoted below:-

This order is in relation to the intervention applications filed by Don Chandrasena and Sumudu Kantha Hewage [present Appellant]. These two intervenient applications were supported by the learned President's Counsel and they have sought to intervene in this writ application filed by the Petitioner [Hon. (Dr.) Bandaranayake] which sought to quash the decision of the Parliamentary Select Committee. The petitioners claimed that they are citizens of Sri Lanka and the proposed intervenient, Mr. Sumudu Kantha Hewage, in addition claimed that he is an Attorney-at-Law. Their position is that their intervention would assist this Court in arriving at a decision as the petitioner has not made the Attorney General as a party to these proceedings. This Court after careful consideration of the application of the two petitioners observes that a grant or refusal of the relief sought by the petitioner will not have any adverse impact directly or indirectly on the intervenient petitioners. Further, the Court has decided to notice the Attorney General to appear as *amicus curiae* in this application and therefore the intervention of the intervenient petitioners is not required to assist Court in these proceedings. Therefore this Court dismisses the application for intervention. Both applications for intervention are dismissed.

It is noteworthy that after the refusal of the application of the Appellant to intervene on 3rd January 2013, the Attorney General was in fact noticed to assist Court, and after hearing all Counsel including the learned Attorney General on 7th January 2013, proceeded to pronounce judgment on the same day, granting the Hon. (Dr.) Bandaranayake a mandate in the nature of writ of *certiorari* quashing the report and findings of the Parliamentary Select Committee, while refusing prohibition. The said judgment, which concluded all proceedings in the Court of Appeal, was set aside by this Court on appeal in *The Attorney General v Hon. (Dr.) Shirani Bandaranayake and Others* SC Appeal No. 67/2013 (SC Minutes dated 21.2.2014) *inter-alia* on the basis that the Court of Appeal lacked jurisdiction to review a decision of a Select Committee of Parliament appointed under Article 107 read with Order 78A(2) of the Standing Orders of Parliament in writ proceedings.

Having heard all the learned Counsel, who made extensive submissions, I am of the opinion that in making the impugned order dated 3rd January 2013, the Court of Appeal had taken into consideration the law and practice applicable to applications for intervention in pending proceedings, and did exercise its jurisdiction correctly in refusing the Appellant's application to intervene. In particular, it is apparent from above quoted passage from the impugned order of the Court of Appeal, that court was satisfied that the participation of the Attorney General, who is the Chief Law Officer of the State, was sufficient to represent the interests of the parties as well as those of the public. In any event, since the proceedings in the Court of Appeal have come to an end, I cannot see any useful purpose in granting the Appellant any relief. For these reasons I make order dismissing the appeal, without costs.

JUDGE OF THE SUPREME COURT

Chandra Ekanayake, J,
I agree.

JUDGE OF THE SUPREME COURT

Sathyaa Hettige, PC., J,
I agree.

JUDGE OF THE SUPREME COURT

Eva Wanasundera, PC., J,
I agree.

JUDGE OF THE SUPREME COURT

Rohini Marasinghe, J,
I agree.

JUDGE OF THE SUPREME COURT