

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

In the matter of an Application under
and in terms of Article 126 of the
Constitution for relief and redress in
respect of the violation of fundamental
Rights guaranteed under Article 12(1)
of the Constitution .

SC FR Application No. 230/2018

1. M. Ashroff Rummy,
Attorney-at-Law, Colombo City
Coroner of No. 61, Meeraniya Street,
Colombo 12.

2. Ms. Iresha Deshani Samaraweera
Attorney-at-Law, Additional
Colombo City Coroner of No. 36/4,
Ketawalamulla Place, Dematagoda,
Colombo 09.

Petitioners

Vs.

1. Hon. Thalatha Athukorale,
Minister of Justice & Prison
Reforms, Ministry of Justice,
Colombo 12.

2. Secretary,
Ministry of Justice & Prison
Reforms, Ministry of Justice,
Colombo 12.
3. Assistant Secretary(Administration)
Ministry of Justice & Prison
Reforms, Ministry of Justice,
Colombo 12.
4. Ms. U.G.L. Anuththara. Of
No.142 E.W. Perera Mawatha
Colombo 10.
5. Ms. A.L.M. Maharoo of 29/15,
School Lane, Dematagoda, Colombo
09.
6. Mr. Edward Ahangama, Attorney at-
Law, formerly Colombo City
Coroner, No. 141, Pannipitiya Road,
Battaramulla.
7. Director of Establishments
Ministry of Public Administration,
Management and Law and Order,
Independence Square, Colombo 07.
8. Secretary, Bar Association of Sri
Lanka, Hulftsdorp, Colombo 12.
9. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

Before : Hon. Jayantha Jayasuriya, PC, CJ
Hon. L.T.B. Dehideniya, J
Hon. S. Thurairaja, PC, J.

Counsel : Dr. Sunil Cooray with Heshan Pietersz for the
Petitioner.

Suren Gnanaraj, SSC for the 1st – 3rd, 7th and 9th Respondents.

Nilantha Kumarage instructed by Danuka Lakmal for the 4th Respondent.

Edward Ahangama for the 6th Respondent appears in person.

Vishwa de Livera Tennakoon instructed by Lanka Dharmasiri for the 8th Respondent.

Argued on : 10.10.2019 and 10.03.2020

Decided on : 30.09.2020

Jayantha Jayasuriya, PC, CJ

Two petitioners in this matter invoked the jurisdiction of this Court under Article 126 of the Constitution. They allege that their right to equality guaranteed under Article 12(1) of the Constitution, in common with the other members of the general public of Sri Lanka, had been violated. They contend that they invoke the jurisdiction of this Court in their own interest as well as in the public interest. They further contend that such violation took place due to the wrongful conduct of the 1st, 2nd and 3rd respondents namely the Minister of Justice, Secretary Ministry of Justice and Assistant Secretary (Administration) Ministry of Justice, respectively. They *inter alia* move the Court to issue an Order quashing the letter produced marked X6, which is signed and counter signed by the Secretary, Ministry of Justice and Assistant Secretary (Administration) Ministry of Justice.

X6 is a letter that is addressed to four recipients. They are the 1st and the 2nd Petitioners and 4th and the 5th Respondents. The aforesaid four recipients by X6 have been informed to perform their duties in the capacity of Inquirers in to Sudden Death in the Division of Colombo City. The said letter assigns four days of the week namely Monday, Tuesday, Wednesday and Thursday for the 1st Petitioner and 4th Respondent.

The balance three days namely Friday, Saturday and Sunday are assigned to 2nd Petitioner and 5th Respondent.

Petitioners contend that the 4th and the 5th respondents are not “competent to function as Additional Colombo City Coroners”. The basis for this contention is that both the 4th and 5th respondents are not Attorneys-at-Law.

This Court on 08 May 2019, granted leave to proceed on the alleged violation of Article 12(1). Court also has granted interim relief in terms of paragraph (d) of the prayer of the Petition dated 17 July 2018. By this order, the 4th and 5th respondents had been restrained from functioning as Additional Colombo City Coroners until the final determination of this application.

The Secretary Bar Association who is named the 8th Respondent as well as the 6th respondent, who is a former Inquirer for the city of Colombo (Colombo City Coroner) associate themselves with the submissions made in support of this application. Furthermore, the 6th respondent submits that the Ministry of Justice developed the basic qualifications for the post of Inquirer for the City of Colombo and such qualifications were made equivalent to the basic qualifications required for the post of Magistrate namely, experience as an attorney-at-law for not less than four years. This respondent and the petitioners submit that the document marked X4 is a copy of the approved scheme of recruitment. He contend that the said document marked X4 was sent to the Director of Establishments by the Secretary of Justice along with the letter dated 06 February 1981, which is produced marked X3. X3 letter titled “Approval of a Scheme of Recruitment, Inquirer into Sudden Deaths – Colombo City” has been sent in response to the letter of the Director Establishments dated 21 January 1981, which is produced marked X2. The document marked X4 sets out 6 items. Item no. 3 sets out the educational qualifications - ‘an Attorney-at-Law with minimum of four years active practice’. According to X4, this post is a permanent pensionable post with a fixed salary structure.

The petitioners having listed out the powers and functions of an inquirer, claim that they should possess “the ability to read and properly understand documents (including

bed-head tickets), the ability to analyze oral and documentary evidence, the ability to act impartially and independently without being succumbed to pressure that might be exerted politicians and leaders of the under world”. They further claim that the function of an inquirer into sudden deaths is a “*judicial function*” (emphasis added). The 6th Respondent also emphasizes on the importance of the functions and duties of an inquirer. It is in this context the petitioners and the 6th Respondent claim that a person functioning as the Inquirer in to sudden deaths – Colombo City who is also called “Colombo City Coroner” should be an Attorney-at-Law. Further, they claim it was the tradition and practice to appoint an Attorney-at-Law to function in the last mentioned post.

However, the 2nd respondent; the Secretary, Ministry of Justice, does not support the position taken up by the Petitioners as well as the 6th Respondent. The 2nd respondent submits that neither the originals of X2, X3 and X4 nor any other letter connected to such correspondence; or any file relating to such documents is available at the Ministry. The 2nd respondent further contend that there is no such post available called ‘Inquirer in to sudden death – Colombo City’ exists and there are no inquirers in to sudden deaths appointed to a permanent pensionable post in the public service. Furthermore, it is submitted that the post of an inquirer into sudden deaths is an honorary position for a fixed period of five years, without any salary attached to it, other than an allowance of rupees five hundred being paid to each inquiry, conducted.

The letter of appointment issued to the first Petitioner is with the heading “appointment as an Inquirer in to sudden deaths – Colombo City” and the letter of appointment issued to the second petitioner is with the title “appointment as a Inquirer in to sudden deaths – Colombo City (Additional)”. Both appointments are termed as “permanent inquirer into sudden deaths” and valid for a period of five years ending 01 January 2019 unless cancelled before. Both these appointments were made in November 2014 to be effective from 01 December 2014. These appointments were made in consequent to the recruitment process initiated with the notice published in the Gazette No 1,838 dated 22nd November 2013 by the Secretary, Ministry of Justice (X5).

The said advertisement calls for applications to appoint Inquirers in to sudden death under section 108 of the Code of Criminal Procedure Act, to fill up the vacancy in the Colombo City limits. According to the said notice the position advertised is not a salaried permanent position in the public service. However, an allowance of rupees five hundred is paid per each inquiry. Furthermore, according to the advertisement, five persons were to be recruited and each one of them should work one day per week. Basic qualifications an applicant should possess include being an attorney-at-law with a practice of more than four years.

It is pertinent to note that the appointments of both 4th and the 5th respondents pre dates the appointments of both petitioners. Appointments of the aforesaid two respondents were made in the year 2012 (R2 - 4R3 and R3 - 5R3). Subsequently, their period of service had been extended (R2(a) - 4R6 and R3(a) - 5R6).

The recruitment process relating to the aforementioned two respondents was initiated with a notice published in the Gazette No 1,705 dated 06 May 2011 (R1 - 4R1 - 5R1). The Secretary Ministry of Justice by the said notice has called for applications to the post of Inquirers in to sudden death to fill up the vacancies in the areas listed in the said notice. Required minimum educational qualifications for the post as advertised was three passes in the G.C.E (Advanced Level) examination, where preference was given to the candidates who had passed the exam in science stream. This advertisement was to fill-up vacancies in several districts. They include Badulla, Colombo, Gampaha, Hambanthota, Kaluthara and Monaragala districts. Under Colombo District, vacancies were advertised in seven divisional secretary divisions and one such division is Colombo and the Inquirer into sudden deaths division identified is – Colombo General Hospital. In addition to above, applications had been called for Inquire in to Sudden Deaths (Muslim) in Colombo, Gampaha and Kaluthara Districts. It is in consequent to this notice the two respondents had applied and appointed to the respective positions.

On an examination of all the material placed before this court by all the parties, the court is unable to conclude that an approved scheme of recruitment for the post of Inquirer into Sudden Deaths (Colombo City) exists. Although the document marked

X4 is titled “Scheme of Recruitment - Post of Inquirer into Sudden Deaths – Colombo City”, the salary structure set out under item 1 and the description provided under item 5 (that it is a permanent pensionable post) do not correspond to the notice published in the Gazette No 1,838 dated 22nd November 2013 by the Secretary, Ministry of Justice (X5). In fact, according to the notice in the said gazette, the post advertised is not a permanent position in the public service and with no salary attached but with only an allowance of rupees five hundred per inquiry is paid. These discrepancies between the ‘scheme of recruitment’ - X4 - and the actual description in the gazette notification - X5 - weighs in favour of the position taken up by the 2nd respondent, the secretary of the Ministry of Justice. It is his contention that the minimum qualifications set out in calling for applications to the post of Inquirer into sudden deaths had varied at different stages. In 2001, the required qualification was passing six subjects with four credit passes at the G.C.E (Ordinary Level) Examination (R6). In 2009, 2011 and 2016 the required qualification was three credit passes at the G.C.E (Advanced Level) Examination. However, in 2013, the required qualification had been an attorney-at-law with minimum of four years experience.

It is pertinent to note that while section 108 of the Code of Criminal Procedure Act No 15 of 1979 governs the appointment of Inquirers, rest of the provisions in Chapter XI of the same Code set out their powers and duties relating to investigations. Chapter XXX of the Code, govern the matters relating to Inquests of Death.

The statute does not set out the required qualifications to perform the functions of an Inquirer. The power to make the appointment and to set out the area in which they are to perform their duties is a matter left to the Minister. Therefore, a decision on the necessary minimum qualifications and the geographical area within which duties to be performed by an Inquirer should be based on objective and reasonable criteria. In this regard it is pertinent to note that powers and duties an Inquirer has to perform does not depend on the geographical area in which he has to perform the duties. All persons should be treated equally. Therefore, setting out different criteria based on the area of service per se could lead to unequal treatment unless such differentia is based

on justifiable objective criteria on valid reasons and one such criteria could be the competency in a particular language depending on the area of service. The Supreme Court in fact had accepted that classifications are allowed if they are not arbitrary and founded upon intelligible differentia. **Ananda Dharmadasa and Others v Ariyaratne Hewage and Others** ([2008] 2 SLR 19, **Tuan Ishan Raban and Others v Members of the Police Commission** ([2007] 2 SLR 351). The objective of this requirement is to treat equals equally and not unequally.

However, the material available in these proceedings do not indicate that such criteria exists to make a distinction between the minimum qualifications needed to perform duties of an Inquirer in Colombo City and duties of an Inquirer in any other part of the island. Furthermore, there is no material available to conclude that such classification has been made by administrative or executive action in the year 1981 as claimed by the Petitioners.

Under these circumstances, I see no valid grounds to challenge the appointments of the 4th and 5th respondents or the subsequent assignment of area of work to them. Both of them had been appointed in the year 2012 based on the advertisement published in the Gazette No 1,705 dated 06 May 2011. They had been attached to the Inquirer in to sudden deaths division named ‘Colombo General Hospital’.

In fact the advertisement published in Gazette No 1,627 dated 06 November 2009 (R7) contain similarly named inquirer divisions in other Divisional Secretary Divisions too. ‘Bandaragama Government Hospital’, ‘Rikillagaskada Hospital’, ‘Panadura General Hospital’ and ‘Welikanda Hospitals’ are Inquirers in to Sudden Deaths Divisions in Bandaragama, Hangu ranketha, Panadura and Welikanda; Divisional Secretariat Divisions, respectively.

In the year 2018, both the 4th and the 5th Respondents had been re-assigned to share work in the Colombo City division along with the two Petitioners. According to the 2nd Respondent, prior to such re-assignment of duties, series of meetings had been held with the participation of the Petitioners and 4th and 5th Respondents with regard to the delays in holding inquests at Colombo National Hospital and the impugned

reassignment of duties was initiated with the objective of reducing delays by ensuring that the Inquirers are not overburdened. Creating the geographical boundaries for a particular division is a function that would depend on many factors such as the workload and convenience of relevant stakeholders, including the general public. In fact, section 108 of the Code of the Criminal Procedure Act No 15 of 1979, empowers the Minister to appoint any person by name or office to be an inquirer for any area of which the limits are specified in the appointment.

I further observe, that the Petitioners have moved this Court, to lay down guidelines relating to the qualifications necessary for the appointment of the City of Colombo Inquirer in to Sudden Deaths and an Additional City of Colombo Inquirer into Sudden Deaths. However, the material placed before this Court through these proceedings in my view is not sufficient for the Court to embark upon a process of such nature. However, considering the content of the advertisements published calling for applications for the post of Inquirers between the period 2001 to 2016, Court observes that varying levels of education ie G.C.E (Ordinary Level), G.C.E (Advanced Level) and Attorneys-at-Law have been stipulated as minimum qualifications required to be possessed by the applicants. It is prudent and necessary to embark upon a proper study having consulted all stakeholders who have the knowledge, experience, expertise and an interest in this matter and thereafter formulate clear guidelines on the experience and qualifications a person should possess to be appointed an Inquirer, early. Petitioners as well as any other persons who have an interest in this matter including the Bar Association of Sri Lanka could make their representations during such a consultative process. Through such a transparent process a decision may be made whether a classification should be made among the Inquirers depending on the geographical area in which such duties are to be performed, provided such classification can be made on intelligible criteria without acting arbitrarily.

Honourable Attorney-General, who is the 9th Respondent in this matter and who represented several Respondents including the first three Respondents is directed to bring these observations to the attention of the 2nd and 3rd Respondents for necessary action.

In view of the foregoing findings, I am unable to hold that the rights guaranteed under Article 12(1) to the petitioners or to any other person had been infringed. Therefore, I refuse to grant any relief as prayed for in the Petition. The application is, accordingly dismissed.

Chief Justice

L.T.B. Dehideniya, J

I agree.

Judge of the Supreme Court

S. Thurai Raja, PC, J.

I agree.

Judge of the Supreme Court