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E COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA.

In the matter of an application for order in the nature of writ of Certiorari and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

(Writ) Application No.448/2008

Jayantha Liyanage,
14/5A, Dharmapala Mawatha,
Pollatthapitiya,
Kurunegala.

Petitioner

Vs.

Dayananda Dissanayake,
Commissioner of Elections,
Election Secretariat,
02, Sarana Mawatha,
Rajagiriya,
Sri Jayawardenapura.

Respondent



BEFORE

MS. CHANDRA EKANAYAKE, J. (President C/A) &
ANIL GOONERATNE, J.

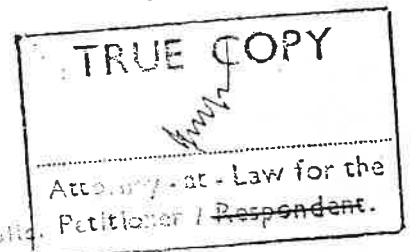
COUNSEL

Manohara de Silva P.C. with D. Weeraratne for the
Petitioner.

A. Gnanathan (PC) A. S. G. with Isuru Balapatabendi
S.C. for the respondent.

DECIDED ON

21.07.2008



H. B. M. GOONERATNE
Attorney-at-Law for the
Commissioner of Elections
No: 26D, Jaysveed Mawatha,
WENNAPPUWA.

MS. EKANAYAKE, J. (P/CA)

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The Petitioner by his petition dated 23.05.2008 (supported by affidavit) has sought inter alia;

- 1) a writ of certiorari quashing the respondent's order referred to in his letter sent to the petitioner dated 21.01.2008 (P43).
- 2) A writ of mandamus on the respondent compelling him to recognize the Sinhala Jathika Permauna as a recognized political party and assigning the symbol Crown as depicted in (P17).

As per sub paragraph (d) of the prayer to the said petition an interim order restraining the respondent from allocating the Sinhala Jathika Peramuna's Party symbol Crown to any other political party or person other than the Petitioner, has been sought.

Petitioner has contended that the Sinhala Jathika Peramuna (hereinafter referred to as SJP) having made several applications to the respondent for the recognition of the same as a recognized political party under section 7 of the Parliamentary Elections Act No. 01 of 1981 and having held inquiries petitioner's request had been rejected by the respondent by letter P18 and further that the said party has been in active politics continuously. After rejection of the 2nd application of the petitioner, he had made a 3rd application on 10.12.2007 to the respondent to have the Sinhala Jathika Peramuna as a recognized political party together with the party symbol (P17) and other documents mentioned in paragraph 27 of the petition and in response to same the respondent had informed the petitioner to attend an inquiry on 14.01.2008.

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The Petitioner had participated in the above inquiry and thereafter by letter dated 21.01.2008 (P43) the Respondent had informed him that the request made on 10.12.2007 was rejected. As averred in P31 of the Petition, the Petitioner having made an appeal to the Election Commissioner on 05.01.2008 for reconsideration of the request made by him on 10.12.2007 by letter dated 09.03.2008 (P45) and the said appeal too was rejected by the Election Commissioner. The petitioner contended that the SJP has already fulfilled all the requirements stated in the provision of 7(4)(b) and 7(5) of the Parliamentary Elections Act No. 01 of 1981 and thus the respondent has sufficient reasons to form his opinion that the said SJP has the ability to contest the election as he could take into consideration the fact that some of the office bearers have contested elections as team leaders or as candidates and that the SJP has been able to maintain the party for a period of nearly 09 years. In the aforesaid premises the petitioner contends that the conduct of the respondent in refusing to recognize the SJP is arbitrary, capricious and unlawful in as much as for the reasons stated in paragraph 33 of the petition and in the corresponding paragraph of the affidavit annexed.

When the interim relief sought as per sub paragraph 'd' of the prayer to the petition was supported, respondent's counsel having objected to the same has made his submissions.

It appears that the substantive reliefs sought as per sub paragraphs 'b' and 'c' of the prayer to the petition are to quash the letter of the respondent sent to the petitioner dated 21.01.2008 (P43), and a writ of mandamus compelling the respondent to



recognize the said party as a recognized political party and assigning symbol crown as depicted in P17.

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A Petitioner who seeks interim relief in his favour must always satisfy Court that necessity has arisen for the intervention of Court by way of interim action. Interim orders by their very nature greatly depend on the opinion of the Judge as to the necessity for interim action.

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In this regard it would be pertinent to consider the view expressed by His Lordship Samarakoon, CJ. In *Billimoria Vs Minister of Lands and 2 Others* (1978-1979) Per Samarakoon, CJ at page 15:

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“.....It is clear therefore that the Court had to decide whether writs could issue or not and this could not be decided without notice being first issued on the respondents and affording them an opportunity of being heard. All this would have taken considerable time. The interests of justice therefore required that a stay order be made as an interim measure. It would not be correct to judge such orders in the same strict manner as a final order. Interim orders by their very nature must depend a great deal on judge’s opinion as to the interim action.”



the main factor to be considered by a Court whether to issue or not to issue a stay order whether its (Court’s) final orders would if the petitioner is successful be rendered obligatory. In the case at hand my view is that the petitioner has been successful in establishing the above. Having considered the material before Court I am also inclined

to form ~~the~~ ^{an} opinion that necessity for interim action has arisen and if the interim relief is not granted irreparable mischief and/or injury would be caused to the petitioner in this case. Further the decision in *Duwearatchi vs. Vincent Perera (1984 2 S.L.R.)* also would lend assistance here. In the above case it was held that - when the Court is considering the issue of a stay order the Court will be guided inter alia by the following principles:-

- a) Will the final order be rendered nugatory if the Petitioner is successful?
- b) Where does the balance of convenience lie?
- c) Will irreparable and irreparable mischief or injury be caused to either party?

Having considered all the material before Court, I am inclined to take the view that if the interim relief is not granted, the final order will be rendered nugatory in the event the petitioner is successful and the balance of convenience too favours granting of interim relief.

For the above reasons the interim relief as prayed by sub paragraph 'd' of the prayer to the petition is hereby issued until final determination of this application.

Sgd.

President of the Court of Appeal

Cooneratne, J.

I agree.

Sgd.

Judge of the Court of Appeal

Kwk/

