JUDGMENTS TO BE CITED

ADMINISTRATIVE LAW - 1

Ref: 1/08/2004 – Rs. 64.00

Locus standi in applications for prerogative writs – Court cannot *ex mero motu* when exercising the writ jurisdiction under Article 140 of the Constitution – provisions of Sports Law – lack of approval of the Minister for appointments. Application for writ of mandamus must establish his legal right to the performance of a corresponding duty by the Respondent.

D.U.M. Jayatilleke and others – v- Jeevan Kumaratunge and others

C.A.(Writ) Appl. No. 1312/2004

Decided by Saleem Marsoof, P.C., J (P, C/A) and Sriskandarajah, J on 29.7.2004

This was an application filed by the Petitioners seeking a writ of certiorari to quash the decision made by the President or the secretary General or the office bearers or the members of the National Olympic Committee (NOC) to select and/or appoint Joseph Kenny the 28th Respondent as the Chef de Mission of the Sri Lankan sporting contingent due to participate in the Olympic Games scheduled to be held in Athens Greece in August, 2004.

Sriskandarajah, J, with Marsoof, J (P/CA) agreeing held:-

".....The standing rules applicable to applications for prerogative writs have to be considered in the light of the developments taking place in this sphere of relevant law. In *Premadasa vs. Wijeywardena and others* [1991] 1 Sri LR 333 at 343 Thambiah J after analyzing the recent statutory and other development that have taken place in England in regard to standing, has observed that;

"In recent years the standing of persons who have a particular interest or grievance of their own over and above the rest of the community has been progressively widened.

".....It is evident that the Petitioners have a longstanding association and interest in sports. Therefore their concern that the officials who accompany the Sri Lankan contingent to the Olympic Games have to be selected and appointed according to the procedure laid down by law cannot be ignored. They are entitled to insist on transparency and accountability in the appointments of officers who accompany the Sri Lankan contingent to an international event of this nature, particularly in the context that public funds are utilized for this purpose. In these circumstances the Petitioners cannot be named as busy bodies interfering in the function of the institutions established by law. The petitioners are questioning the appointment of the Chef de Mission in their capacity as sportsmen and those who are involved in sports administration for a substantial period of time. Therefore this court holds that the petitioners have the necessary locus standi to institute this application.

".....The power to appoint officers for the Olympic Games is vested in the National Olympic Committee. This power cannot be abdicated to another person or to an association. The composition of the National Olympic Committee is provided in Sections 18(2) and 18(2) (b) of the Sports Law.

".....the writ Jurisdictions vested in this Court by Article 140 of the Constitution does not give the power to this Court to inspect and examine records or to quash the decisions or determinations of any institution *ex mero motu.* The writ jurisdiction of this Court can only be invoked by an application to this Court. Therefore this Court can only consider any complaint of illegality or irregularity with respect to which the jurisdiction of Court is invoked by any person having the necessary standing, unlike in a case coming within the revisionary jurisdictions of this court. As the validity of the appointments of other officials is not before this court this court cannot consider the legality of those appointments.

"From the minutes of the National Olympic Committee and the relevant correspondence it is clear that there is no evidence to show that a selection process had taken place in the National Olympic Committee in relation to Chef De Mission. It appears that there is no prior written approval of the Minister for this appointment as well. As the officers are looking after the interest of the athletes and as they are representing Sri Lanka, their selections and appointments cannot be permitted to be done in an ad hoc manner especially in the circumstances where there are specific procedures laid down in the regulations. The appointment in violation of such procedure is an illegality. Therefore this court quashes the appointment of Joseph Kenny as the Chef De Mission of the Sri Lankan contingent.

"Petitioners seeking an order in the nature of Mandamus must show that there resides in them a legal right to the performance of a corresponding legal duty by the party against whom the Mandamus is sought. In order, therefore that a Mandamus may issue to compel something to be done under a statute it must be shown that the statute imposes a public duty. In this instant case there is no duty cast on the Respondents to appoint a Chef De Mission, as the relevant regulations only provide whenever necessary to appoint a manager or coach or observer or any other person as an official of the teams to the Olympic Games. As Chef De Mission falls within the category of officers and as there is no duty cast on the Respondents to appoint such officer the application for the issue of Mandamus is refused."

ADMINISTRATIVE LAW - 2

Ref: 02/08/2004 Rs. 32.00

Despite the contractual nature of the underlying relationship between the parties, the Supervisory Jurisdiction of the Court is attracted by administrative action taken in the purported exercise of statutory power in a statutory body – a party owes to Court for a full and frank disclosure when initiating writ proceedings – a rule of practice insists upon petitions for writ being made without undue delay.

C.A. Appln. No. 1928/2003

H.R. Samarasiri and another – vs- Peoples Bank and another

Decided by Saleem Marsoof, P.C., J (P/CA) and K. Sripavan, J on 30.7.2004

In this application the Petitioners sought a writ of certiorari to quash the decision of the 1st Respondent Bank to sell the property mortgaged by the Petitioners to the said Bank.

Marsoof J, (P/CA) with Sripavan, J agreeing held:

"Loan transaction is purely contractual in nature

"It is trite law that the supervisory jurisdiction of this Court does not extend to the resolution of purely contractual disputes. Learned Counsel for the 1st Respondent has invited the attention of Court to the decision in *Podinona v Urban Council Horana* [1981] 2 Sri LR LR 141 in which the Court of Appeal held *inter alia* that inasmuch as the relationship between the parties was contractual,

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the Petitioner was not entitled to the remedy by way of certiorari. He also referred to *Jayaweera v Wijeratne* [1985] 2 Sri LR 413 in which G.P.S de Silva J. (as he then was), with whom Jameel J agreed, held that where the relationship between the parties is a purely contractual one of a commercial nature neither certiorari nor mandamus will lie to remedy grievances arising from an alleged breach of contract or failure to observe the principles of natural justice even if one of the parties is a public authority.

".....It is clear that despite the contractual nature of the underlying relationship between the parties, the supervisory jurisdiction of this court is attracted by administrative action taken in the purported exercise of statutory power vested in a statutory body.

".....The question therefore is whether the matter before Court is purely contractual in nature, or whether it involves the purported exercise of power by a statutory authority. The contract of loan or the mortgage bonds entered into or executed by the Petitioners do not authorize the 1st Respondent Bank to resolve to sell the mortgaged property by public auction. The resolution to sell the property in question by public auction was passed by the Board of Directors of the 1st Respondent Bank only in the exercise of the power vested in the said Board of Directors by Section 29D of the Peoples Bank Act. The said Act has also laid down certain safeguards for the exercise of power, such as the requirement that any resolution passed under the aforesaid provision should be published in the Gazette as well as in a daily news paper and "copies of such notice shall be dispatched to the borrower if he is alive". The failure to comply with such procedural safeguards could render action taken by the 1st Respondent Bank *ultra vires* and void. Therefore, I hold that the matter before Court is not of a purely contractual nature, and the jurisdiction of this Court has rightly been invoked. The first preliminary objection raised on behalf of the 1st Respondent Bank is therefore rejected.

"The 1st Respondent has also taken up a preliminary objection on the basis that the Petitioners have suppressed or misrepresented material facts. Learned Counsel for the 1st Respondent has invited the attention of Court in particular to the following passage from the judgment of the Court of Appeal in *Blanca Diamonds (Pvt) Ltd v Wilfred Van Else & Others* [1997] 1 Sri LR 360 at page 362, in which Jayasuriya J. emphasized the duty a party owes to Court for a full and frank disclosure when initiating writ proceedings-

".....the Court finds no merit in the submission that the Petitioners have suppressed or misrepresented material facts. Accordingly, the second preliminary objection too, has to be rejected.

"The final preliminary objection taken up on behalf of the 1st Respondent is that the Petitioners are guilty of laches, in that they have invoked the jurisdiction of this Court only on 11th November 2003 although the resolution marked X4 sought to be quashed in these proceedings was passed on 21st July 2002. Learned Counsel for the 1st Respondent has referred to the decision in *Hulangamuwa v. Siriwardena, Principal Visaka Vidyalaya and others* [1986] 1 Sri LR 275 at page 278 and *Biso Menika v. Cyril De Alwis* [1982] 1 Sri LR 368 at 378 for the proposition that unexplained delay in making an application for a prerogative remedy disentitles a Petitioner to relief

"However, this Court is of the view that laches on the part of the Petitioner is only one of the many factors that ought to be considered in the exercise of the discretion vested in the Court for the grant of prerogative relief. Our courts have repeatedly pointed out that "the principles of laches have not been applied automatically or arbitrarily or in a technical manner by Courts of Equity themselves." *See,* Wanasundera, J. in *Ramasamy v. The Ceylon State Mortgage Bank* (1976) 78 NLR 510 at 514 and G.P.S. de Silva, J. *Rajakaruna v. Minister of Finance* [1985] 1 Sri LR 391 at page 395. In *Bisomenika v Cyril de Alwis and Others* [1982] 1 Sri LR 368 at page 379 Sharvananda J. made the following pertinent observation-

".....It is noteworthy that there does not exist in Sri Lanka any statutory provision or rule of Court that sets out a time limit within which a petition for the issue of a prerogative writ must be filed. However, a rule of practice has grown which insists upon such petition being made without undue delay. When no time limit is specified for seeking such remedy, the Court has ample power to condone delays, where denial of a prerogative writ to the petitioner is likely to cause great injustice.

".....Even though the Petitioners have taken three months from the date of X45 to come to Court, in view of the position that the case of the Petitioners is based on procedural ultra-vires and the various matters that have been adverted to in the judgment of the Supreme Court in the *Bisomenika* case have to be carefully considered in upholding a plea of laches, I am inclined to the view that this matter should be decided after carefully considering all relevant facts along with the merits of the case. I therefore hold that it is not appropriate at this stage to decide on the preliminary objection taken by the 1st Respondent on the ground of laches

"Accordingly, I make order rejecting the first and second preliminary objections taken up on behalf of the 1st Respondent and further hold that the question of laches should be decided after hearing the case on its merits. The case will be mentioned on 5th August 2004 in Court No. 303 to fix date for argument."

CIVIL PROCEDURE CODE- 1

Ref: 03/08/2004 – Rs. 32.00

Civil Procedure Code – Sections 755 and 765 considered – an appeal notwithstanding lapse of time under section 765 of the Civil Procedure Code – no sufficient cause shown by the petitioner to justify the delay – in statutory interpretation there is a presumption that the Legislature did not intend what is inconvenient or unreasonable.

M.S.M. Marsook vs. R.A.H.S. Rajapaksha and 11 others

C.A. Appln. No. 1121/2002
D.C.Kurunegala No. 3989/P

Decided by S.I. Imam, J on 12.07.2004

This was an application to present an Appeal notwithstanding lapse of time under Section 765 of the Civil Procedure Code.

It was held by S.I. Imam, J as follows:-

"It is contended on behalf of the 10th defendant-petitioner that he was seriously ill during the period 15.04.2001 to 25.5.2001 as borne by medical certificate dated 25.8.2001 tendered as P8.

"The petition of appeal should have been tendered to the District Court before 15.5.2001. The medical certificate (P8) is dated 25.8.2001. It states that M.T.M. Nisfer had been ill between 15.4.2001 and 25.5.2001. It however does not state that the said Nisfer cannot attend courts and therefore cannot be accepted. The Ayurvedic Dr. Ariyatilleke merely stated that his patient Nisfer had

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been advised to rest between the aforesaid period. Nisfer or someone else on his behalf could have taken steps to present the petition of appeal before 15.5.2001. However this was not followed and the medical certificate dated 25.08.2001 (P8) is clearly out of time. The petitioner has not acted in conformity with section 755(3) of the Civil Procedure, and thus the petition of appeal cannot be accepted and is hereby dismissed.

"In the case of *Wickremaratne vs. Samarawickrema* 1995 (2) SLR 212 Sarath N. Silva J (as he then was) observed that "In statutory interpretation there is a presumption that the Legislature did not intent what is inconvenient or unreasonable. The rule is that the construction must be agreeable to Justice and reasons should be given."

"The Petitioner filed the original petition of appeal on 21.06.2002, which is clearly out of time and is thus rejected. Thereafter as aforesaid on 26.07.2002, the petitioner filed an amended petition which is also clearly out of time, and also has been filed approximately 1 year and 4 months AFTER the judgment of the District Judge dated 15.03.2001. No satisfactory cause has been shown by the Petitioner to justify the delay in filing the petition and amended petition under section 765 of the Civil Procedure Code. The petitioner has also not acted in conformity with section 755(3) of the Civil Procedure Code, and as mentioned earlier, has filed the petition of appeal well AFTER 60 days. Furthermore no good ground has been urged by the petitioner to set aside the judgment of the learned District Judge of Kurunegala as required by Section 765 of the Civil Procedure Code. If the aforesaid judgment of the District Judge is set aside, grave and irreparable loss would be caused to the plaintiff-respondents and the other respondents. I see no reason to interfere with the judgment of the District Judge, which is hereby affirmed.

CIVIL PROCEDURE CODE - 2

Ref: 04/08/2004 Rs. 32.00

When a litigant seeks a hearing it is the duty of court to grant it. Principles of natural justice are the basis of our laws of procedures.

G. Krishnamoorthy –vs- S. Ganeshan

C.A.L.A. Appln. N. 24/2002

D.C. Kandy L-20715

Decided by Gamini Amaratunga, J on 07.03.2003

This was an application for leave to appeal against the order of the learned District Judge dated 17.1.2002. The plaintiff-petitioner ("the petitioner") filed his plaint, proxy and affidavit on 15.1.2002 and moved Court, by way of a motion bearing the same date to call the case in open Court on 18.1.2002 to enable Counsel to support the application contained in the plaint,. In the prayer of the plaint, the plaintiff has prayed for an enjoining order and an interim injunction and a permanent injunction against the defendant. The complaint of the learned President's counsel for the petitioner is that the learned Judge should have given an opportunity for the plaintiff's Counsel to support the application for an enjoining order and if such opportunity had been given the plaintiff's Counsel would have placed his submissions before the learned Judge to persuade him to grant the enjoining order prayed for by the plaintiff.

Gamini Amaratunga, J held:-

".....The point to be decided here is whether the failure to give a hearing to the plaintiff has caused any prejudice to him. It appears that basis for the learned Judge's order was the learned Judge's order was the learned Judge's view that the plaintiff has not claimed any substantive relief. In connection with this the learned President's Counsel cited the decision of this Court in *Gordon Frazer and Co., vs. Jean Marie Losio and Martin Venzel* (1984) 2 SLR page 85. He brought to the notice of Court the following passage from the judgment.

> "Section 54(1)(1) of the Judicature Act No. 2 of 1978 provides that the plaintiff is entitled to an injunction against the defendant restraining the commission of an act, the commission or continuance of which would produce injury to the plaintiff. This in itself a substantive relief which can be made the subject of a decree in terms of sections 217(f) of the Civil Procedure Code, without a prayer for declamatory relief." P92

"The learned President's Counsel submitted that if the plaintiff's Counsel had an opportunity to make submissions before the learned Judge to explain the legal position as set out in the passage cited above that would have been vital factor to be considered in deciding whether an enjoining order should be issued to prevent the defendant from carrying out further construction operations. After considering the legal position set out above, a Judge is entitled to make his own decision but Mr. Nagendran's submissions was that the failure of the court to give a hearing to the plaintiff's counsel deprived the plaintiff's chance to attempt to persuade the Court to issue an enjoining order as prayed for. I am in agreement with his submissions. When a litigant seeks a hearing, it is the duty of Court to grant it. As was stated by Sharvananda, J (as he then was) in *Ittapana vs. Hemawathie* (1981) 1SLR 476 at 479 principles of natural justice are the basis of our laws of procedure. For the reasons set out above I grant leave to appeal and allow the appeal and set aside the order of the learned District Judge dated 17.1.2002 and direct the learned Judge to give a hearing to the Counsel for the plaintiff to support his application for the relief prayed for in the plaint and make an appropriate order thereafter. In the circumstances of this case I make no order for cost.

CIVIL PROCEDURE CODE - 3

Ref: 05/08/04 Rs. 28.00

B.V.P. Mendis vs. M.C. Mendis

C.A.L.A. Appln. No. 190/2003
D.C. Homagama No. 5758/D

Decided by Gamini Amaratunga J on 17.6.2004

This was an application for leave to appeal against an order of the learned District Judge. A preliminary objection was taken that the application for leave to appeal was out of time.

Gamini Amaratunga, J held:

"In terms of section 757(1) of the Civil Procedure Code, in computing the time within which a leave to appeal application must be filed the following days are excluded.

1. The date of the Order
2. All Sundays
3. All Public Holidays
4. The date of filing.

".....In order to contend that the application was filed within time, the learned counsel for the petitioner relied on the provisions of section 8(1) of the Interpretation Ordinance which reads as follows:-

"where a limited time from any date or from the happening of any

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event is appointed or allowed by any written law for the doing of any act or the taking of any proceeding in a court or office, and the last day of the limited time is a day on which the court or office is closed, then the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day thereafter on which the court or office is open."

"By virtue of the provisions of the Holidays Act No. 29 of 1971, Saturdays are non-working days on which the Courts are closed. If the last date for filing an appeal falls on a Saturday can a party file his appeal on the next Monday and contend that his appeal has been filed within time? In view of the provisions of Section 8(1) of the Interpretation Ordinance I answer that question in the affirmative. *Lex non cogit ad impossible* (The law does not compel the performance of what is impossible). In considering whether an application has been filed within time, a Court has to take into consideration Section 8(1) of the Interpretation Ordinance along with Section 757(1) of the Civil Procedure Code. Section 757(1) does not stand alone. It is supplemented by the rule in Section 8(1) of the Interpretation Ordinance. This is clear in view of the provisions of Section 8(5) of the Interpretation Ordinance which is as follows: "This section shall apply to written laws made as well before as after commencement of this Ordinance".

"The following words of S.N. Silva, C.J. in *Selenchina vs. Mohamed Marikar and others* (2000) 3 SLR 100 at 102 show that the aforesaid two enactments apply together.

"The decision given in *Selenchina vs Mohamed Marika,* regarding computation of time for filing a notice of appeal in terms of Section 754(4), is equally applicable to the time limit set out in Section 757(1). Therefore I hold that by virtue of the provisions of Section 757(1) read with Section 8(1) of the Interpretation Ordinance, the leave to appeal application filed on 9.6.2003 is within time.

"Accordingly the preliminary objection is overruled."

CONSTITUTION – 1

Ref: 06/04/2004 Rs. 84.00

Preclusive clause in Article 61A – against judicial review of P.S.C. – Article 55(5) not effective if the Officer who made the relevant order does not have legal authority – application of Section. 22 of the Interpretation Ordinance in applying the provisions of the Article 61A – writ of certiorari will not issue where the end result will be futility, frustration, injustice and illegality.

W.A. Ratnasiri and 12 others - - v- W. Ellawala, Addl. Secretary, Ministry of Tertiary Education & Training and 6 others

C.A. No. 16/2004

Decided by Saleem Marsoof, P.C. J (P/CA) and Srivapan, J on 16.7.2004

Saleem Marsoof, J with K. Sripavan, J agreeing held:

"While praying for a declaration from this Court that decisions of the Transfer Appeal Board are null and void and invalid in law, the Petitioners also seek an order in the nature of a writ of *mandamus* directing the Respondents to convene "a fresh and a proper appeal board according to law" to determine the appeals they have lodged against the decisions of the Transfer Board, with respect to their transfers for the year 2004.

"Learned State Counsel has submitted *inter alia* that this Court is deprived by Article 61A of the Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, of jurisdiction to review the decision of the Public Service Commission marked 1R18

In view of the elaborate scheme put in place by the Seventeenth Amendment to the Constitution to resolve all matters relating to the public service, this Court would be extremely reluctant to exercise any supervisory jurisdiction in the sphere of the public service. I have no difficulty in agreeing with the submission made by the learned State Counsel that this Court has to apply the preclusive clause contained in Article 61A of the Constitution in such a manner as to ensure that the elaborate scheme formulated by the Seventeenth Amendment is given effect to the fullest extent

This Court is clearly bound by the decision of the Bench of Seven Judges of the Supreme Court in *Ramuppillai v Festus Perera, Minister of Public Administration, Provincial Councils and Home Affairs and Others* [1991] 1 Sri LR 11,

Our Courts have held that Article 55(5) would be of no effect if the order is made by an officer who does not have legal authority to do so. In such cases our Courts have held that the decision of the relevant authority is null and void and the preclusive clause in the Constitution is no bar to review. For instance in *Abeywickrema v Pathirana* [1986] 1 Sri LR 120.....

"In this context it is also necessary to consider the application of Section 22 of the Interpretation Ordinance in applying the provisions of Article 61A of the Constitution. Section 22 of the Interpretation Ordinance sought to clarify the law in the wake of the decision of the House of Lords in *Anisminic Ltd. v. Foreign Compensation and Another* [1969] 1 All ER *208.* Section 22 which sought to exclude judicial review in general terms, also recognized exceptions in terms of which judicial review is permitted in limited circumstances, one of which is where the authority in question has acted without jurisdiction. I am inclined to the view that since this Court exercises a supervisory jurisdiction in terms of Article 140 of the Constitution which commences with the words "Subject to the provisions of the Constitution", the constitutional ouster contained in Article 61A excludes judicial review even in situations contemplated by the proviso to Section 22 of the Interpretation Ordinance. As Mark Fernando J observed *in Migultenne v.The Attorney-General* (1996) 1 SLR 408 at page 419 in connection with Sections 106 and 107 of the Republican Constitution of 1972.

"I therefore hold that the decisions or determinations made by the 4th Respondent as the secretary to the Ministry of Tertiary Education and Training, being the decisions or determinations of a public officer exercising authority delegated by the Public service Commission, are precluded from judicial review by Article 61A of the Constitution. As noted earlier subordinate legislation including rules and regulations made by the Cabinet of Ministers prior to the seventeenth Amendment such as the provisions of the Establishment Code, cannot inhibit the application of Article 61A of the Constitution, in terms of which the decision of the 4th Respondent taken in pursuance of power vested in him by reason of a delegation of authority lawfully made by the Public Service Commission under Article 57 of the Constitution, is precluded from judicial review. The first preliminary objection taken up by learned State Counsel has therefore to be upheld..

This Court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right. Court grants relief at its discretion in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that "A writ.....will not issue where it would be vexatious or futile." See, P.*S. Bus Co. Ltd. v. Members and Secretary of the Ceylon Transport Board* 61 NLR 491, 496. In *Siddeek v. Jacolyn*

Seneviratne and Others (1984) 1 SLR 83 at page 90, Soza J delivering the judgment of the Supreme Court observed that –

"The Court will have regard to the special circumstances of the case before issuing a writ of certiorari. The writ of certiorari clearly will not issue where the end result will be futility, frustration, injustice and illegality."

CONSTITUTION – 2

Ref; 07/04/2004 Rs. 36.00

Appointment oif National List MPs outside the National or Nomination List – Articles 80, 125(5) – Pronouncing on the validity of an Act of Parliament – interpretation of the Constitution and the exclusive jurisdiction of the Supreme Court.

Centre for Policy Alternatives (Guarantee) Limited and another –v- Commissioner of Elections and 7 others

C.A. No. 798/2004

Decided by Saleem Marsoof, P.C. J, (P/CA) with k. Sripavan J on 7.7.2004.

The Petitioners complained that steps were being taken to nominate the 6th and 7th Respondents and one other hitherto undisclosed person, who were not included in the UPFA National List or any Nomination Paper of that party, to fill vacancies that will be created by three or more persons already declared elected form the UPFA National List resigning their respective seats. Such vacancies have to be filled in terms of Section 64(5) of the Parliamentary Elections Act No. 1 of 1981 as amended by Act No. 15 of 1988, Act No. 29 of 1988, Act No. 35 of 1988 and Act No. 54 of 1988. The Petitioners allege that the action contemplated by the UPFA would be *ultra vires* the Constitution and the law, arbitrary, unreasonable and irrational in addition to being violative of the fundamental rights of the 2nd Petitioner and other registered voters. The petitioners also allege that such steps would also be in contravention of the 'elective principle' enshrined in the Constitution and would undermine the sovereignty of the People, impinging on the spirit and substance of Article 4(a) read with Article 3 of the Constitution.
Saleem Marsoof J (P/CA) withg K., Sripavan J agreeing held:

".....This Court is bound by the decision of the Supreme Court in that case to the effect that the Court of Appeal will continue to exercise supervisory jurisdiction over the Commissioner of Elections until such time as the Election Commission is constituted. Accordingly, the first preliminary objection has to be rejected.

As pointed out by the Supreme Court in its determination with respect to *The Monetary Law (Amendment) Act &The Inland* Revenue (*Special Provisions) Bill,* Supreme Court Determination No. 08/2003, 09/2003, 10/2003 & 11/2003, S.C Draft Minutes dated 4.8.2003, Article 80 (3) removes the jurisdiction of any Court to pronounce upon or in any manner call in question the validity of an Act of Parliament. However it does not appear from the Petition or the submissions made by Counsel for the Petitioners that the Petitioners are seeking to challenge the validity of Section 64 (5) of the Parliamentary Election Act, introduced by Section 6 of the Parliamentary Elections (Special Provisions) Act No. 35 of 1988. The case of the Petitioners appears to be based on the proposition that Section 64 (5) of the Parliamentary Election Act ought to be interpreted and applied in consonance with the 'elective principle' said to be enshrined in the Constitution and also consistently with the provisions of the Constitution.

".....It is also too early to predict whether or not any questions involving the interpretation of the Constitution itself will arise in the course of the hearing and determination of this application. It is provided in Article 125(1) of the Constitution that whenever any question of interpretation of the Constitution arises in the course of any proceedings in any court other than the Supreme Court "such question shall forthwith be referred to the Supreme Court for determination", From the submissions of the learned counsel for the Petitioners it can be gathered that what they are contending at the moment, is that the 'elective principle' said to be enshrined in the Constitution should be applied to the interpretation of Section 64 (5) of the Parliamentary Election Act. This involves, in the view of Court, the application of certain constitutional principles and provisions to the interpretation of an ordinary Act of Parliament.

In fact in *Ghany v Dayananda Dissanayake, Commissioner of Elections and others* [2004] 1 Sri LR 17 at page 25, the Supreme Court has faulted the Court of Appeal for concluding without hearing that a prima facie case has been established. This Court therefore rules that the said preliminary objection has been raised prematurely and therefore rejects the same.

This Court therefore holds that it is possessed of jurisdiction to hear and determine this application, subject however to any question of interpretation of the Constitution arising in the course of the hearing or prima facie evidence of any infringement of fundamental rights or language rights appearing in the course of the hearing, in which event this Court will make an appropriate reference to the Supreme Court in terms of the applicable provisions of the Constitution. All preliminary objections raised on 16th April, 2004 are rejected, and the Respondents are directed to file their objections, if any, to the substantive application before Court on or before 29th July, 2004.

LAND ACQUISITION ACT

Ref: 08/08/2004 Rs. 12.00

Notice under section 2 of the Land Acquisition Act purports to vest land in the State – notice is quashed

J.A. Kusumawathie and 6 others –vs- Asst. Divisional Secretary, Beruwala and another

C.A. No. 1104/2003

Decided by S. Marsoof , J PC (P/CA) and K. Sripavan, J on 8.06.2004

The petitioner has filed this application seeking to quash the notice dated 4.4.2003 made under Section (2) of the Land Acquisition Act by the 1st respondent marked P16. The Petitioner sought a mandate in the nature of Prohibition against the 1st and the 2nd Respondents from proceeding with the proposed acquisition.

Marsoof J (P/CA) with Sripavan J agreeing held:

"When this matter as taken up for argument the learned Counsel for the petitioner pointed out that the main ground for challenging the validity of P16 was that on the face of it, it purports to acquire the land in question. By using the words අත් පත් කර ගන්නා ලදී it purports to declare that the land in question in extent 35 acres has been acquired for the purpose of village expansion. The learned State Counsel states that the document marked P16 is only a notice made in terms of Section 2 of the Land acquisition Act indicating the particulars of the lands proposed to be acquired and that it is not the objective of the said notice to vest the land in the State. In the circumstances the Court makes order quashing the notice marked P16 for the reason that it purports to declare that the land in question has already been acquired, which is beyond the ambit of the powers vested on the 1st Respondent, under Section 2 of the Land Acquisition Act. This will not preclude the 1st Respondent or any other office entitled to do so according to law from issuing a fresh notice under Section 2 of the Land Acquisition Act, if it is intended to proceed with the proposed acquisition. The Court however finds no reasons to issue the Writ of Prohibition sought by the Petitioner. The Court makes no order for costs.