

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

In the matter of an Application under the Article 140
of the Constitution for mandates in the nature of
Writs of Certiorari, Prohibition and Mandamus.

C.A. Writ ApplicationNo: 487/2015

T.R. Ratnasiri,
No. 23/4, Makola South, Makola.

Petitioner

Vs

1. Director General of Customs,
“Customs House”,
No: 40, Main Street, Colombo 11.
2. Mr. Raveendrakumar,
Deputy Director of Customs,
“Customs House”,
No: 40, Main Street, Colombo 11.
3. Colombo Dockyard Limited,
Graving Docks, P.O. Box 906,
Port of Colombo, Colombo 15.
4. Managing Director,

Colombo Dockyard Limited,
Graving Docks, P.O. Box 906,
Port of Colombo, Colombo 15.

5. The Commander of Navy,
Sri Lanka Navy, Naval Head
Quarters, Upper Chatham Street,
Colombo 01.

6. The Chairman,
Sri Lanka Ports Authority,
No. 19, Church Street, Colombo 01.

7. The Chairman,
Board of Investment,
West Tower, World Trade Centre,
Echelon Square, Colombo 01.

8. Commissioner General of Inland
Revenue,
Department of Inland Revenue,
Inland Revenue Building,
P.O. Box 515,
Sir Chiththampalam A. Gardiner
Mawatha, Colombo 02.

9. Hon. Attorney General,

Attorney General's Department,
Hulfsdorp, Colombo 12.

Respondents

Before: L.T.B. Dehideniya, J. (P/CA)

Shiran Goonerathne, J.

Counsels: Shehan Ananda with Pasan Weerasinghe for
the Petitioner instructed by Derrick
Samarasekara Associates.

Damayanthi Silva for 3rd and 4th Respondents.

M. Jayawardane for the 7th Respondent.

F. Jameel SASG PC for all the Respondents
except 3rd and 4th Respondents.

Argued on: 05/12/2017

Decided on: 11/01/2018

L.T.B. Dehideniya J (P/CA)

The Petitioner instituted this action seeking for mandates in the nature of Writs of Certiorari and Writs of Mandamus. The Petitioner was a Customs Officer by profession. He stated that he received an information regarding a custom fraud and initiated an inquiry. The 3rd Respondent, Colombo Dockyard constructed and sold several boats and tugs to the Sri Lanka Navy and to the Port Authority of Sri Lanka. The Petitioner's case is that the 3rd Respondent had collected the custom duty from its

clients but had not paid to the Customs. The Petitioner is not satisfied with the order made by the Customs in the said inquiry. He moved this court to issue a Writ of Certiorari to quash the order of the said inquiry and to issue Writs of Mandamus compelling the 3rd Respondent to pay the Customs duty and a Writ of Mandamus against the 1st Respondent to pay the reward to the Petitioner and his informant.

While the case was pending the Petitioner departed from his life. His wife made an application seeking permission to substitute herself in place of the Petitioner. The Respondents objected to this application on several grounds.

The party to be substituted filed a motion dated 29th June 2017 with a petition affidavit seeking permission to herself substitute in the room of the Petitioner. In the said motion she stated that the Petitioner filed this Writ application claiming inter-alia the cash reward for which he is entitled to. She further says that since the Petitioner is deceased his heirs have the right to claim the reward and for the said purpose it is necessary to substitute the widow. This motion indicates the sole purpose of making the substitute is to claim the reward that the Petitioner claimed.

In the Court of Appeal (Appellate Procedure) Rules 1990 no provision made to substitute a Petitioner in a Writ application. The rule clearly provide for the substitution of the Respondents. Part IV of the Court of (Appeal Appellate) Procedure Rules 1990 provides for the substitution. The Rule IV (a) provides

In respect of an act or omission done in official capacity by a public officer who has thereafter ceased to hold office, such application maybe made and proceeded with against his successor, for the time being, in such office, such successor being made a respondent by a reference to his official designation only, in terms of sub rule (2).

In this rule substitution of a petitioner is not provided for.

A substitution can be done only if the cause of action survives. In the instant case the Petitioner is claiming a reward. It is personal to the Petitioner. It is true that if the reward money comes to the Petitioner his heirs will be benefited, but it doesn't mean that the heirs become entitled or the authorities are under a legal duty to pay the reward to the heirs. There's no statutory duty cast on the 1st Respondent to pay the reward to the widow. In the case of Perera and 3 others vs Abeyrathne 79(2) NLR 99 at 103 Sharvananda J. held that the Writ of Mandamus was not

available to the wife of the deceased claiming rights on a pension's scheme.

The Learned Counsel for the 3rd and 4th Respondents cited a case decided in the Republic of Philippines where it has been held that

“the substitution prayed for calls for the determination of the question whether upon the death of the Petitioners, the action brought in this proceeding's survival to their heirs or legal representatives. The action survived if the cause of action survived.”

(Ermando Gueverra and Marcos Guevarra vs Vicente Del Rosario, G.R. No. L 49252 November 13, 1946, in the Supreme Court of the Republic of Philippines.)

Further the counsels cited the cases of Walter V. Bd. Of Education 95 Ill. App. 3d 313 (1981) 420 N.E. 2D 175 Appellate Court of Illinois – Fourth District where it is held that

“A Mandamus action is treated like other actions at law and that if a cause of action is so personal that a party couldn't assign it during life, then it cannot survive to his representatives at the death unless a statute specifically provides for its survival.”

In the instant case the reward is so personal he cannot assign it during his lifetime.

The counsel for the 3rd and 4th Respondents further submits that the Petitioner has not demanded the authorities to perform the public duty and there is no denial of the said duty. Therefore the counsel submits that the Petitioner hasn't established a cause of action for a Writ of Mandamus. Further he submits that the reward is paid only after 5 months of the order. But this application was filed prior to the expiry of 5 months. These are matters on merit of the application. Therefore it is not necessary to consider these matters at this stage.

Under these circumstances I'm of the view that Petitioner cannot be substituted by his widow.

I uphold the objections and terminate the proceedings.

President of the Court of Appeal

Shiran Gooneratne, J

I agree

Judge of the Court of Appeal