

**SILVA AND OTHERS VS.
DIRECTOR OF HEALTH SERVICES AND OTHERS**

COURT OF APPEAL
SRISKANDARAJAH, J.
CA 97/2007
MAY 11, 2005

Human Rights Commission of Sri Lanka Act 21 of 1996 Section 14, Section 15 (3) - Recommendations - Report of the Commission - Proprio vigour - Enforcement of Order of the Commission - Altering or amending list of duties - Scope of prerogative writs - against whom?

The Human Rights Commission recommended that the post of Public Health Inspectors (PHIs) and Public Health Field Officers (PHFOs) are in equal capacity and that in the circumstances it was appropriate to take out the supervisory duties of the PHIs over the PHFOs. After this recommendation the respondent directed the relevant Heads of Departments to suspend the duty of the supervision of PHFOs by PHIs. The petitioners - PHIs sought to quash the said recommendation of the Human Rights Commission.

Held

- (1) A report of the Commission does not take effect *proprio vigour* accordingly certiorari will not issue to quash the report of the Commission.
- (2) There is no provision in the Act to enforce the recommendation of the Commission. If the Commissioner's recommendations are not complied with, the Commission can only report to the President and in turn it can be placed in Parliament.
- (3) The effect of the Circular is that PHFOs should not be supervised by PHIs. The removal of supervision is an alteration in the list of duties which was given to the PHIs, the authorities are entitled to alter or amend the list of duties at all times.
- (4) The petitioners have no claim that their duties should not be changed or altered. The authorities are entitled to decide or

arrange the list of duties of the officers. The PHIs have no right whatsoever to supervise PHFOs. This supervisory arrangement is only an administrative step to facilitate the smooth functioning of the institution.

- (5) Certiorari does not lie against a person unless he has legal authority to determine a question affecting the rights of a subject and at the same time, has the duty to act judicially when he determines such question. The 1st respondent has no duty to act judicially when he decides to remove the supervision of PHIs over the PHFOs.

APPLICATION for a writ of certiorari/mandamus.

Cases referred to:

- (1) *G. P. A. Silva and others vs. Sadique and others* (1978-79-80) 1 Sri LR 166 at 172, 177.
- (2) *R. vs. Electricity Commissioner exp. London Electricity Joint Commission Co. Ltd* – 1920 – 1 KB 171
- (3) *Jayawardane vs. Silva* – 72 NLR 25

Upul Kumarapperuma with *Suranga Munasinghe* for petitioner.

Nirmalan Wigneswaran SC for 1st and 2nd respondents.

S. N. Vijitsingh for 6th respondent.

Rohan Sahabandu for added respondents.

September 23rd 2009

SRISKANDARAJAH J.

The Petitioners are Public Health Inspectors (PHIs) attached to the Ministry of Health and belongs to the Paramedical Service of Sri Lanka. The added Respondents are Public Health Field Assistants and in the year 2003 their designation was changed to Public Health Field Officers (PHFOs) and these officers are in Middle Level Technical Service after 1994 the said service was renamed as Sri Lanka Technical Service.

The Petitioners submitted that all the Public Health Inspectors (PHIs) performed their duties under supervision of the Regional Medical Officers (RMO) and Medical Officers (MO). Public Health Inspectors (PHIs) supervised their staff. The said staff comprised Public Health Field Officers (PHFOs), and Spray Machine Operators. The Public Health Field Officers (PHFOs) performed their duties under the supervision of the Public Health Inspectors (PHIs) according to the circular dated 23.11.1982.

The Respondents submitted that in the organizational structure of the Health Service under Provincial Councils, Field staff attached to the Anti Malaria and Anti Filariasis Campaigns are placed directly under the Assistant Medical Officers of Health, who in turn report to the Medical Officers of Health and/or the Divisional Directors of Health Services. In this structure Public Health Inspectors (PHIs) are separate and distinct category of officers who are also directly placed under the supervision of the Assistant Medical Officers of Health. According to the Respondents, Public Health Inspectors (PHIs) and Public Health Field Officers (PHFOs) are in parallel services and perform parallel functions [in the field] of the Public Health Sector. Consequent upon the adoption into the Sri Lanka Technical Service, Public Health Field Officers (PHFOs) have their own hierarchical structure within the service.

I.e:- Public Health Field Officers (PHFOs) – Supervisory Grade

Public Health Field Officers (PHFOs) – attached Grade I

Public Health Field Officers (PHFOs) – attached Grade II

The Respondents contended that at the initial point, when Public Health Field Officers (PHFOs) were mere casual employees recruited in the capacity of 'Casual Overseers', the supervision of the work of the said 'Casual Overseers' had been entrusted to Public Health Inspectors (PHIs). However an anomaly had been created by the failure to make the formal adjustment to this position by a direct circular removing the supervisory function of Public Health Inspectors (PHIs) over the Public Health Field Officers (PHFOs), after the Public Health Field Officers (PHFOs) were clearly and distinctly given independent status coming under the purview of Assistant Medical Officers of Health.

The aforesaid issue was brought to the Human Rights Commission by the 6th Respondent and after deliberation the Human Rights Commission recommended that the post of Public Health Inspectors (PHIs) and Public Health Field Officers (PHFOs) are in equal capacity and it was further recommended that in the said circumstances it was appropriate to take out the supervision duties of the Public Health Inspectors (PHIs) over the Public Health Field Officers (PHFOs). The said recommendation is marked as P11a and the direction to implement the said recommendation marked as P12. After this recommendation by a circular bearing No. 02-175/2006 dated 30.09.2006 the 1st Respondent directed the relevant Heads of Departments to suspend the duty of the supervision of Public Health Field Officers (PHFOs) by Public Health Inspectors (PHIs). This circular is marked as P10.

The Petitioners in this application is seeking a writ of certiorari to quash the recommendation of the Human Rights Commission marked P11a and P12 and the direction of the 1st Respondent embodied in circular P10.

Section 14 of the Human Rights Commission of Sri Lanka Act No 21 of 1996 provides that; the Commission may, on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, investigate an allegation of the infringement or imminent infringement of a fundamental right of such person or group of persons caused – (a) by executive or administrative action, or (b) as a result of an act which constitutes an offence under the Prevention of terrorism Act. No. 48 of 1979, committed by any person.

Section 15(3) of the said Act provides “Where an investigation conducted by the Commission under section 14 discloses the infringement or imminent infringement of a fundamental right by executive or administrative action, or by any person referred to in paragraph (b) of section 14, the Commission may make such recommendations as it may think fit, to the appropriate authority or person or persons concerned, with a view to preventing or remedying such infringement or the continuation of such infringement.” The recommendation marked P11a and P12 are made under the above provisions.

In *G.P.A. Silva and Others v. Sadique and Others* ⁽¹⁾ at 172, 177 the full bench of the Supreme Court comprising Justice Samarawickrame J., Thamotheram J. Ismail J. Weeraratne J. and Sharvananda J came to the conclusion that the report of a commission does not take effect *proprio vigore*, accordingly, Certiorari will not issue to quash the report of the commission. The Court held:

“It appears to be clear that certiorari will also lie where there is some decision, as opposed to a recommendation, which is a prescribed step in a statutory process and leads to an ultimate decision affecting rights even though that decision itself does not immediately affect rights. From the citations which I have set out, it would appear

that a Writ of Certiorari would lie in respect of an order or decision where such order or decision is binding on a person and it either imposes an obligation or involves civil consequences to him or in some way alters his legal position to his disadvantage or where such order or decision is a step in a statutory process which would have such effect.”

The recommendation of the Human Rights Commission contained in P11a and P12 does not take effect *proprio vigore*. There is no provision in the said Act to enforce the recommendation of the said Commission. If the Commission’s recommendations are not complied with, the Commission can only report to the President and in turn it can be placed in Parliament. In view of this the recommendation of the Human Rights Commission cannot be quashed by a writ of Certiorari.

The Petitioners in this application has also sought a writ of certiorari to quash the decision of the Director General of the Health Services; the 1st Respondent to implement the recommendation of the Human Rights Commission by his Circular P10. The effect of the said circular is that the Public Health Field Officers (PHFOs) should not be supervised by Public Health Inspectors (PHIs). The removal of supervision is an alteration in the list of duties which was given to the Public Health Inspectors (PHIs), the authorities are entitled to alter or amend the list of duties at any time. The Petitioners have no right to claim that their duties should not be changed or altered. The authorities are entitled to decide or arrange the list of duties of its officers. If this is not permitted the administration of an institution cannot be run smoothly. The removal of the supervision of the Public Health Inspectors (PHIs) over Public Health Field Officers (PHFOs) cannot be claimed as affecting rights of the Public Health Inspectors (PHIs). The Public Health Inspectors (PHIs) have no right what

so ever to supervise the Public Health Field Officers (PHFOs). This supervisory arrangement is only an administrative step to facilitate the smooth functioning of the institution.

Atkin L.J in R v. Electricity Commissioners exp. London Electricity Joint Commission Co. Ltd ⁽²⁾ held that the writ of certiorari will be issued;

“wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, acts in excess of their legal authority.”

Following the above legal principle the Supreme Court held in *Jayawardene v. Silva* ⁽³⁾ that a writ of certiorari does not lie to quash an detection made by the collector under Section 130 of the Customs Ordinance. Certiorari does not lie against a person unless he has legal authority to determine a question effecting the rights of a subject and at the same time, has the duty to act judicially when he determines such question.

In the instant case the Public Health Inspectors (PHIs) have no right what so ever to supervise the Public Health Field Officers (PHFOs) and at the same time the Director General of Health Services the 1st Respondent has no duty to act judicially when he decides to remove the supervision of the Public Health Inspectors (PHIs) over the Public Health Field Officers (PHFOs). Therefore a writ of certiorari will not lie to quash the direction of the 1st Respondent contained in P10 that the Public Health Field Officers (PHFOs) should not be supervised by Public Health Inspectors (PHIs).

For the above reasons this court dismisses the application without costs.

LECAMWASAM, J – I agree.

Application dismissed.