

**KUMARASINGHE**  
**v.**  
**DAYANANDA DISSANAYAKE**

COURT OF APPEAL  
J.A.N. DE SILVA, J.  
C.A. 1133/99 (WRIT)  
JULY 6, 2000  
SEPTEMBER 19, 2000  
DECEMBER 11, 2000

*Writ of Mandamus - To call for Nominatons and hold Provincial Council Elections - Northern and Eastern Provincial Council - Provincial Councils Act No. 42 of 1987, Act No. 27 of 1996 - Provincial Councils Elections Act No. 2 of 1998 - Constitution - 13th Amendment - Public Security Ordinance - S.5 - Prohibition.*

**Held :**

- (i) The President of the Republic of Sri Lanka has made Regulations dated 12.7.1998 - published in gazette No. 618/98 under S.5 of the Public Security Ordinance having the effect of making the date and time fixed for nomination for all purposes..... *of no effect*. The Gazette also prohibits the Nomination of candidates to the N.E Provincial Council so long as part II of the Public Security Ordinance is in operation in the N.E Provinces.
- (ii) The Commissioner of Election is prohibited by the said Regulation from calling for nominations.
- (iii) Mandamus will not be issued where Respondent has no power to perform the act sought to be mandated.

Application for a Writ of Mandamus.

**Cases referred to :**

1. *R vs. Eastburn Lorp* (1900) 83 LJ 338 (CA)

J.C. Wellamuna for Petitioner.

Saleem Marsoof, P.C Addl. Solicitor General with Viran Corea, S.C for Respondent.

*Cur. adv. vult.*

January 30, 2001

**J.A.N. DE SILVA, J.**

The petitioner is a citizen of Sri Lanka, resident in Vavuniya coming within the Northern and Eastern provinces of the country. He claims to have contested the General Election held in 1994 for the District of Vavuniya in the Electoral District of Wannu. By this application the petitioner seeks a writ of mandamus directing the Commissioner of Elections, the first respondent, to call for nomination and to take steps to hold Provincial Council Elections in the Northern and Eastern Provincial Council under the Provincial Council's Election Act.

At the hearing of this application the Additional Solicitor General who appeared for the respondents raised the following preliminary objections.

- (a) The petitioner's application is misconceived in law.
- (b) The relief sought by this application would have the effect of reviewing and rendering ineffective, an Act of the President of Sri Lanka whose acts are immune from review under and in terms of Article 35 of the Constitution.
- (c) The petitioner has failed to make the Attorney General a party to this application in the representative capacity as contemplated in Article 35.
- (d) The petitioner has failed to cite as respondents to this application certain material parties.
- (e) (1) The petitioner is guilty of laches or undue delay.  
(2) Relief sought is futile since the prevailing situation in the North and East is not conducive to the meaningful conduct of Provincial Council Elections.

After oral submissions both parties tendered written submissions in respect of the preliminary objections.

With the introduction of the Thirteenth Amendment to the Constitution of Sri Lanka and the Provincial Council Act No. 42 of 1987, the Provincial Councils were established. In order to facilitate Provincial Council Elections the Parliament enacted Provincial Councils Election Act No. 2 of 1988 which was certified on 27.01.1988. Thereafter steps were taken to conduct the Provincial Council Election in respect of the Northern and Eastern Provinces on 10.11.1988. At the conclusion of the said election those elected were duly declared members of the North East Provincial Council. One Mr. Varatharaja Perumal who was thus declared a member of the said Provincial Council by Gazette Notification No. 535/15 of 8<sup>th</sup> December 1988 was made the Chief Minister of the North-East Provincial Council in December 1988.

In or about April 1990 the said North-East Provincial Council declared "an independent State" within Sri Lanka. The resulting position was that Parliament Amended the Provincial Councils Act by Act No. 27 of 1990 on 06.07.1990 and introduced Section 5A to the main Act. Accordingly, a Provincial Council stands dissolved if there is a communication to the President from the Governor of a Province stating that the majority of the membership of the Council expressly repudiated or manifestly disavowed obedience to the Constitution. Provincial Councils Election Act too was amended by Act No. 29 of 1990 permitting fresh elections if a Provincial Council stands dissolved under Section 5A of the Provincial Councils Act.

In terms of the amended Act No. 27 of 1990, if a Provincial Council stands dissolved by operation of Section 5A the Commissioner shall be deemed to have complied with the provisions of Section 10 of the Provincial Councils Election Act if he publishes the notice thereunder within a period of one week from the date of commencement of the said Act.

The Commissioner of Elections did publish a notice in the Government Gazette on 11.07.1990 in compliance with Section

10 of the said Provincial Councils Elections Act (as amended), inter alia calling for nominations in respect of Northern and Eastern Province between 25.07.1990 and 01.08.1990. (The said Gazette was produced marked P10).

The petitioner's complaint is that even though the Commissioner of Elections called for nomination on 11.07.1990 in terms of Section 10 of the Provincial Councils Election Act he failed to hold elections during the stipulated period as required by Section 20 of the said Act. Counsel for the petitioner submitted that the notice calling for nominations by P10 is now ineffective and frustrated and hence has no effect or force in law. The petitioner demanded that the Commissioner should publish a fresh notice calling for nominations and take action according to law. By letter dated 12.07.1999 the petitioner requested the Commissioner to hold the Provincial Council Election in the Northern and Eastern Provinces. The Deputy Commissioner of Elections on behalf of the Commissioner merely acknowledged the receipt of the said letter by letter dated 12.08.1999. In this backdrop the petitioner seeks a writ of mandamus from this Court to compel the Commissioner to hold the elections.

It is to be noted that President of the Republic of Sri Lanka had made regulations dated 12<sup>th</sup> July 1990 which were published in the Government Gazette bearing No. 618/98 of (1R1) under Section 5 of the Public Security Ordinance (as amended) having the effect of making the date and time fixed for nomination by the said Gazette notification of the Commissioner of Elections "for all purposes..... of no effect." The said Gazette notification of 618/18 of 12<sup>th</sup> July 1990 also prohibits the nomination of candidates to the North-East Provincial Council so long as part 11 of the Public Security Ordinance is in operation in the Northern and Eastern Provinces. The 1<sup>st</sup> respondent, the Commissioner of Elections has averred in his affidavit that he is prohibited by the said regulation from calling for nominations in respect of the said provinces so long as part 11 of the Public Security Ordinance (as amended) remains operative.

The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities of all kind (vide Harding Public Duties and Public Law Chapt. 3). "Mandamus" literally means "we command." It differs from writ of prohibition or certiorari inasmuch as (if granted) it will require some positive act on the part of the body or person to whom it is addressed rather than prohibiting some step (Stephen's Commentaries 20<sup>th</sup> Edition Vol. 1 Page 59)." Mandamus commands the person to whom it is addressed to perform public or quasi public legal duty which he has refused to perform and the performance of which cannot be enforced by any other adequate legal remedy..... where any tribunal, inferior Court or body of persons charged with the performance of a public duty do not discharge the duty, mandamus lies to compel him to do it." (Short and Mellor, Brown Practice 2<sup>nd</sup> Edition Page 197).

Several cases have recognized certain conditions that should be satisfied by an applicant when he seeks a writ of mandamus. One such condition is that mandamus will not be issued where respondent has no power to perform the act sought to be mandated *R vs. Eastburn Lorp*.<sup>(1)</sup>

As mentioned earlier in the instant case the Commissioner of Elections has taken up the position that there is a prohibition under the Public Security Ordinance operating against him from performing his duties. Counsel for the petitioner submitted that the promulgation and continuation of the emergency regulations are illegal and contrary to law. The emergency regulations referred to above are approved/ratified by Parliament every month. This Court has no power to review legislation passed by Parliament. No competent Court has declared that the emergency regulations are illegal or invalid or inoperative. In the circumstances I hold that the petitioner is not entitled to obtain a writ of mandamus from this Court. Accordingly I refuse this application.

In view of the above finding I do not consider it necessary to deal with the rest of the objections raised by the respondent. This application is dismissed without costs.

*Application dismissed.*