

RAWAYA PUBLISHERS AND OTHER
v.
WIJEDASA RAJAPAKSHA, CHAIRMAN
SRI LANKA PRESS COUNCIL & OTHERS

COURT OF APPEAL
DE SILVA, J. (P/CA)
C.A. 1166/99
SEPTEMBER 21TH, 2000
OCTOBER 31TH, 2000
JANUARY 8TH, 2000

*Writ of Certiorari - necessary party not been made a party - Is it fatal?
Who is a necessary party?*

The Petitioner sought to quash the Order made by the Respondents wherein they (the Sri Lanka Press Council) directed the Petitioner to apologise to the complainant X, within one month from the receipt of the said order. The complainant X was the Secretary - General of the Janatha Vimukthi Peramuna (J. V. P)

On the preliminary objection raised, that the said X in whose favour the Order which is sought to be made has not been made a party to the application -

Held :

- (i) In the content of writ applications a necessary party is one without whom no order can be effectively made.

The Order of the Press Council is in his (X) favour. The Petitioner cannot be permitted to proceed with an application keeping the original complainant out of the proceedings.

APPLICATION for a Writ of Certiorari.

Cases referred to :

1. *James Perera v. Godwin Perera* - 48 NLR 110
2. *Gunatilake v. Government Agent, Galle* - 47 NLR 49
3. *Farook v. Siriwardena- Election Officer & others* - 1997 1 SLR 145
4. *Carron v. The Government Agent, Western Province* - 46 NLR 237
5. *Abeydeera and 162 others v. Stanley Wijesundera, Vice Chancellor, University of Colombo & Others* - 1983 2 SLR 267

6. *Ramasamy v. Ceylon State Mortgage Bank and others* - 78 NLR 510
7. *Udit Narayan Singh v. Board of Revenue*, AIR 1963 - SC 786
8. *Prabodh Verma v. State of Uttar Pradesh* - AIR 1985 SC 167

Upul Jayasooriya for Petitioner.

Ikram Mohamed P.C., with *Kapila Liyanagama* for Respondents.

Cur. adv. vult.

July 27, 2001.

J. A. N. DE SILVA, J. (P/CA)

The petitioners in this application seek to quash the order made by the first to seventh respondents on 02. 11. 1999 wherein they directed the petitioners to apologize to the complainant one Tilwin Silva, within one month from the receipt of the said order. The complainant Tilwin Silva claims to be the Secretary - General of the Janatha Vimukthi Peramuna and the complaint has been made to the Press Council by document marked P2.

When this application came up for hearing a preliminary objection on behalf of the respondents was raised that the General - Secretary of the Janatha Vimukthi Peramuna in whose favour the order which is sought to be quashed has been made has not been made a party to this application and the failure to do so is fatal to the application filed by the petitioners. On this question both parties agreed to tender written submissions and finally did so on the 8th of January 2001.

In the written submissions the respondents referred to and relied on the following decisions of the Supreme Court.

- (1) *James Perera v. Godwin Perera*⁽¹⁾
- (2) *Gunathilaka v. Government Agent Galle*⁽²⁾
- (3) *Farook v. Siriwardena, Election Officer and Others*⁽³⁾

In *Perera v. Perera (Supra)* it was held that in an application for a writ of mandamus to compel a local authority

to issue a bakery license in favour of the petitioner in circumstances prejudicial to the rights of the person who was already holding the license, the failure to make the holder of the license as a party respondent is a fatal irregularity. In two earlier cases a similar objection was sustained viz in *Carron v. The Government Agent Western Province*⁽⁴⁾ and *Gunathilake v. The Government Agent Galle*(*Supra*). In the case of *Abayadeera and 162 Others v. Stanley Wijesundara, Vice Chancellor University of Colombo and Another*⁽⁵⁾ It was held that 115 students of the North Colombo Medical College are necessary parties and the failure to make them respondents is fatal to the petitioners application.

In *Farook v. Siriwardena*(*Supra*) his Lordship Justice Kulatunga at page 148 has stated as follows "there is another point although it had not been previously raised namely that T. K. Azoor who had been nominated by the party as its new member of the Municipal Council and whose rights are affected in these proceedings had at no stage was made a party to the application made to the Court of Appeal. This itself is fatal to the validity of this application."

Counsel for the petitioner tried to distinguish all the authorities cited by the respondents and submitted that in all those cases the Court has recognized the fact that if an application is made to add a party omitted in the original application the Court will allow such an application irrespective of delay. He specifically relied on the decision in *Ramasamy v. Ceylon State Mortgage Bank and Other*⁽⁶⁾ where the Minister who made the vesting order under the relevant Act in respect of the redemption of land was not made a party to the application of writ of certiorari but was allowed to be added as a party respondent on an application made 4 years after the case was originally filed.

It should be noted that in *Ramasamy's case* Court primarily considered the power it has to deal with the question of laches and Justice Wanasundara stated that "principle of laches must be applied carefully and discriminately and not automatically and as a mere mechanical device." In that case the Minister who was in charge of the subject was made a party and when

the objection was taken that he was not the person who made the order Court considered the circumstances of the case and permitted the addition, because otherwise grave prejudice would have been caused to the petitioner. The Court was considering about the proprietary rights of the petitioner.

In the instant case the Counsel for the petitioner submitted that Tilwin Silva is not a necessary party but a useful party, in the circumstances the addition should be permitted. Tilwin Silva is the complainant in the case. The order of the Press Council is in his favour. Petitioner cannot be permitted to proceed with an application keeping the original complainant out of the proceedings.

In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings. In the case of *Udit Narayan Singh v. Board of Revenue*⁽⁷⁾ it has been held that where a writ application is filed in respect of an order of the Board of Revenue not only the Board itself is a necessary party but also the parties in whose favour the Board has pronounced the impugned decision because without them no effective decision can be made. If they are not made parties then the petition can be dismissed in limine. It has also been held that persons vitally affected by the writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity (*vide Prabodh Verma v. State of Uttara Pradesh*⁽⁸⁾ also see Encyclopedia of Writ Law By P. M. Bakshi)

As stated earlier Tilwin Silva is the complainant. Failure to make him or Janatha Vimukthi Peramuna a party to this application is a fatal irregularity. Petitioners should not be permitted to use the process of Court to cover their lapses. This application is dismissed with costs.

Application dismissed.