

1963

Present: H. N. G. Fernando, J.

L. P. PERERA and 4 others, Petitioners, and
THE CEYLON GOVERNMENT RAILWAY UNIFORM STAFF
BENEVOLENT FUND and another, Respondents

*S. C. 459/1962—In the matter of an Application for an Interim
Injunction and Mandate in the nature of a Writ of Mandamus.*

*Railway Uniform Staff Benevolent Fund Ordinance—Section 17—Duty of secretary and
treasurer to summon general meetings—Not a public duty—Mandamus.*

The duty, under section 17 of the Railway Uniform Staff Benevolent Fund Ordinance, of the secretary and treasurer to summon a general meeting is neither a public duty nor a duty to be performed in the interests of or for the benefit of the public. Accordingly, the writ of *mandamus* will not lie to compel its performance.

APPPLICATION for a writ of *Mandamus*.

*C. S. Barr Kumarakulasinghe, with Prins Gunasekera, K. Ratnesar
and D. S. Wijesinghe, for the petitioners.*

*H. W. Jayewardene, Q.C., with G. T. Samerawickreme and
H. W. Senanayake, for the respondents.*

Cur. adv. vult.

March 11, 1963. H. N. G. FERNANDO, J.—

After hearing argument I refused this application and now state my reasons. The petitioners who are members of the Railway Uniform Staff Benevolent Fund have applied for a writ of Mandamus to direct the Secretary and Treasurer of the Fund to call a General Meeting of the members of the Fund. The duty to call such a meeting upon a written requisition of 50 or more members is cast upon the Secretary and Treasurer by section 17 of the Railway Uniform Staff Benevolent Fund Ordinance (Cap. 284) and the application is designed to compel performance of that duty.

Chapter 284 is reproduced in the Revised Edition of the Legislative Enactments under the title containing "Private Ordinances". The fact that the Ordinance is contained in that title does not of course conclusively establish that duties cast upon persons by any provision of the Ordinance are merely private duties to be exercised in the interests of private persons and not of the public. But an examination of the provisions of the Ordinance does establish that it is within the meaning of Standing Order 52 of the Standing Orders of the House of Representatives an Ordinance merely intended to affect or benefit a private association.

The association was in existence as an unincorporate body prior to the enactment of the Ordinance, which apparently was intended to confer on the association the benefits of incorporation subject to certain conditions imposed in the interests of the members of the corporation.

Counsel for the petitioners has pointed to certain provisions of the Ordinance which confer, inter alia, power on the Permanent Secretary to the Ministry to approve the appointment of the Secretary and Treasurer, power on the Secretary to the Treasury to cause the accounts of the Fund to be examined and powers on the Minister to approve amendments of the rules of the Fund. These powers undoubtedly constitute a safeguard to secure that the matters which they affect are supervised by public officers. But there is nothing in the Ordinance to indicate that these safeguards were provided in the interests of the public. The only persons who can benefit from the maintenance of the Fund and from the safeguards provided are the members of the Fund who apparently can consist only of persons who belong to the Railway Uniform Staff. But even if it can be said that those public officers when required to act *ex officio* under the Ordinance do perform statutory public duties, the same cannot be said of the Secretary and Treasurer who is a person appointed to his office by the members of the Fund acting in their personal capacities. I hold therefore that the duty under section 17 to summon a general meeting is neither a public duty nor a duty to be performed in the interests of or for the benefit of the public. Accordingly, the writ of Mandamus will not lie.

Application refused.

