1941 *Present :* **Keuneman J.**

SUMANGALA MAHA NAYAKE THERO *et al.* *v.* THE REGISTRAR-GENERAL.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *Mandamus.*

Mandamus—*Application to remove the name of an expelled bhikku from register—Right of applicants to compel the respondent to perform the statutory duty—Special and sufficeint interest—Supreme Court not satisfied with motives of applicants—Refusal of writ.*

The members of the Karaka Maha Sangha Sabha of the Malwatte branch of the Siamese Sect of the Buddhist priesthood including the Maha Nayaka of the Malwatte Vihara have a special and sufficient interest in the subject-matter which entitles them to apply for a *mandamus* on the Registrar-General to compel him to remove from the register kept under *s.* 41 (5) of the Buddhist Temporalities Ordinance the name of a Bhikkhu whom they have expelled from the Sangha.

The Supreme Court will refuse a writ of *mandamus* where it is not satisfied as to the propriety of the motives of the applicants or where there has been considerable delay in making the application.

THIS was an application for a writ of *mandamus* on the Registrar-General. The facts appear from the argument.

H. V. Perera, K.C. (with him *N. E. Weerasooria, K.C., J. R. Jayawardene* and *V. F. Gunaratne*), for the petitioners.—The intervenient is a party interested in this application, and there is no objection to the intervention being allowed.

The Karaka Maha Sangha Sabha is the highest ecclesiastical body of the Siamese sect, consisting of about 6,000 bhikkhus. We say that in the course of its duties, it expelled the intervenient in 1935. The Maha Nayaka who is the chairman of it, removed the name of the intervenient from the register under section 41 (5) of Cap. 222, and requested the Registrar-General to alter his register similarly. He refused to do it on the ground that the Ordinance did not contemplate cases of expulsion, and the Maha Nayaka applied for a *mandamus*. The Supreme Court held that the Ordinance did contemplate expulsions, and it was the Registrar-General's clear duty to comply with such requests. See *Maha Nayaka Thero v. Registrar-General*[1].

In the exercise of its discretionary power, however, the Supreme Court refused the application on the *sole* ground of improper motive. I submit that Soertsz J. erred in thinking that it was the Maha Nayaka *personally* who expelled the intervenient. The expulsion was in fact by the Sangha Sabha. My contention is, therefore, that the ground of refusal was not personal to the Maha Nayaka.

Thereafter, the first petitioner again wrote to the Registrar-General to strike off the intervenient's name, and upon his refusal the Karaka Sabha met again, and specially authorised its Secretary, the tenth petitioner, to write to the Registrar-General. The Registrar-General has refused again to do so, and hence the present application.

[KEUNEMAN J.—Why have only seventeen members of the Karaka Sabha applied ?]

[1] *39 N. L. R. 186.*

Of the other three, one is dead, and we can get the other two also to join in our application if necessary.

It may, or may not, be that the Maha Nayaka personally was actuated by *mala fides* but it is monstrous to suggest that the whole of such an august assembly as the Maha Karaka Sangha Sabha is actuated by *mala fides.*

Since the judgment in *Maha Nayaka v. Registrar-General* (*supra*), the intervenient has been admitting pupils into the priesthood. That is a new fact which undermines the authority of the Sabha.

The Registrar-General is arrogating to himself discretionary powers which belong to the Supreme Court alone. It is a pity that he should have consulted the Home Minister. His legal adviser (the Attorney-General) has given him wrong advice. In fact Nihill J. in *Jayasuriya v. Ratanajoti*[1], pointed out that in an appropriate case under the section an application for *mandamus* may not be refused.

In fact, no request need be made by the Maha Karaka Sabha. The Ordinance lays down in imperative terms that the Registrar-General must make the modification whenever the Maha Nayaka conveys the information to him. *See* section 41 (5).

The present petitioners are the members of the Karaka Sabha which expelled the intervenient, and therefore they have a direct legal right to get the expulsion enforced. They have a sufficient interest to apply for this writ. (*R. v. The Manchester Corporation*[2].)

H. H. Basnayake, C.C., for the Registrar-General.—The present petitioners have no right to require the Registrar-General to remove the intervenient's name. Only those who have a special right to insist upon performance are entitled to the writ. *R. v. Lewisham Union*[3]. In *R. v. Manchester Corporation* (*supra*) the petitioners had a very special interest. That case has not been followed since.

In view of the Supreme Court holding in *Maha Nayaka v. Ratnajoti* (*supra*) that there is a substantial dispute between the intervenient, and the Maha Nayaka and Morentuduwa Dhammananda for adjudication in a regular action, and that the modification of the register will place the intervenient in a position of great disadvantage and danger, the Registrar-General was advised not to remove the intervenient's name.

[KEUNEMAN J.—Do you contest the validity of the expulsion of the intervenient by the Karaka Sabha?]

The Registrar-General has no machinery to ascertain whether the expulsion was valid or not. If the Registrar-General had deleted the name of the intervenient he would have done the very thing the Supreme Court did not want to do.

The Registrar-General is following the interpretation placed upon the Ordinance by the Supreme Court, and recognizes expulsion as coming within the Ordinance, but owing to the finding of the Supreme Court in *this* matter, he did not delete the intervenient's name.

L. A. Rajapakse (with him *D. W. Fernando* and *E. L. W. de Zoysa*), for the intervenient.—*Mandamus* is a prerogative writ, not a writ of right, and the Supreme Court has a discretion to refuse it on various grounds (*Short, p. 227 et seq*). The present application is in the nature of a second application.

[1] *41 N. L. R. 78.* [2] *(1911) 1 K. B. 560.* [3] *(1897) 1 Q. B. 498.*

On a principle analogous to *res judicata,* a second application will not be entertained except in cases of formal defects. The basis of this application is the same as that of the previous one (viz., the alleged expulsion of the intervenient in 1935). Soertsz J. was not in error at all, and was aware that it was the Karaka Sabha that purported to expel the intervenient and not the Maha Nayaka personally. In fact this is the previous application in disguise. *See Q. v. Pickles and Anderson* [1]; *Ex parte Thomson* [2]; *Q. v. Mayor and Justices of the Bodnin* [3]; *Q. v. Manchester and Leeds Railway Company* [4].

The petitioners, other than the first, have no status to make this application. It is the Maha Nayaka alone who is referred to in the Ordinance. The other petitioners are not directly or immediately aggrieved. The prosecutor must have a legal right and not consequently aggrieved. *R. v. Lewisham Union* (*supra*). *Vide* also *R. v. Middlesex* [5].

In *R. v. The Manchester Corporation* (*supra*), the prosecutors had taken a special interest in shaping the Act of Parliament to get themselves protected, and were financially affected by the conduct of the respondent. Its principle should be limited to the special facts of that case.

The petitioners are actuated by *mala fides.* The real reason for the alleged expulsion—the validity of which we deny, and the application for *mandamus* is the fact that the intervenient who claims to have been duly elected Adikari of Sripadasthana, has been functioning as such. The cause of Morentuduwa Dhammananda, a rival claimant, has been espoused by the Maha Nayaka and his seventeen followers in the Sangha Sabha. The Sangha Sabha has no voice in the election for the Adikarishiip of Sripadasthana. See *Vanderstraaten's Reports (1871) 215.*

The petitioners are using political intrigue to oust the intervenient. They sought to get him convicted, and failed. Vide *Jayasuriya v. Ratnajoti* (*supra*).

Either Morentuduwa or the Karaka Sabha should bring a regular action as indicated in *Maha Nayaka v. Registrar-General* (*supra*) at page 192. Impropriety of motives was not the only ground for refusal of the last application. The Supreme Court held that the intervenient should not be placed in jeopardy.

The petitioners are manœuvring for position, and any cause of action of the intervenient may be defeated by prescription.

In any case, the petitioners are guilty of laches. The alleged expulsion was in 1935, the first application to the Supreme Court in 1937, and the present one in 1940. The delay is fatal. (*Perera v. Rajapakse* [6]; *Madanayake v. Schrader* [7]; *Jayasuriya v. Silva* [8].)

The Registrar-General was right in refusing to strike off the intervenient's name when the subsequent application was made. This particular matter between these particular parties is *res adjudicata;* and if the Registrar-General complied with their request it would have been to nullify the effect of the Supreme Court decision and to do the very thing which the Supreme Court refused to order him to do.

[1] *(1842) 3 Q. B. R. 599.*
[2] *(1845) 6 Q. B. R. 721.*
[3] *L. R. (1892) 2 Q. B. D. 21.*
[4] *8 Ad and El 413.*
[5] *(1832) 3 B and Ad 938.*
[6] *26 N. L. R. 422.*
[7] *28 N. L. R. 389.*
[8] *17 C. L. W. 111.*

H. V. Perera, K.C., in reply.—The Registrar-General then in assuming a discretion he does not possess. The Government of the country would be in a chaos if public officers flagrantly disobey the rules of law, which govern them. The petitioners have a right to make this application because they are the only body which has the right to ordain and expel. They are interested in maintaining proper discipline in the Sangha. See *R. v. Manchester Corporation* (*supra*). It shows that sufficient interest and not necessarily a specific legal right would suffice. Counsel cited *Jayasuriya v. Ratnajoti*[1].

Cur. adv. vult.

January 22, 1941. KEUNEMAN J.—

This is an application for a writ of *mandamus* on the Registrar-General. The petitioners are seventeen persons described as members of the Karaka Maha Sangha Sabha. They claimed that the Sabha has among its duties the preservation of good order and discipline among the Buddhist priesthood of the Malwatte branch of the Siamese sect, amounting to over 6,000 priests, and has the sole right of ordination, control, appointment and expulsion, and is the Highest Ecclesiastical Court of the Buddhist religion. The whole Sabha consists of twenty members.

They further averred that the Sabha expelled from the priesthood the present intervenient, and that the first petitioner as Maha Nayaka Thera of the Malwatte Vihare, in accordance with section 41 of Chapter 222 (The Buddhist Temporalities Ordinance, No. 19 of 1931), removed the name of the intervenient from the register and requested the Registrar-General to bring his register into conformity with that of the Maha Nayaka Thera.

The *mandamus* is sought in consequence of the refusal of the Registrar-General to make this alteration.

The intervenient, who has a clear interest in this matter, was allowed to intervene in the proceedings.

An earlier application by the first petitioner, the Maha Nayaka Thera, for a *mandamus* was refused by Soertsz J. in the year 1937. Since that date, the tenth petitioner, as Chief Secretary of the Sabha, has requested the Registrar-General to make the required alteration, but the Registrar-General had refused to do so. In this connection, the tenth petitioner had been authorised to take action by the Sabha on November 19, 1938, and February 4, 1940, and at these meetings the seventeen petitioners were the only members present.

In this earlier application (*vide Maha Nayaka Thero, Malwatte Vihare v. Registrar-General*[2]), Soertsz J., after careful examination of the law, held that the removal of the name of a priest from the register in consequence of expulsion from the priesthood fell within the term "*corrections, alterations and additions*" in section 41 (5). He further held that on the fact of this alteration being conveyed by the Maha Nayaka Thera to the Registrar-General, the latter was bound to make the necessary alteration in his register. "It is a duty that the statute casts on him in imperative terms. It gives him no discretion, and he is usurping functions he does not possess when he acts in the manner in which he acted in this case". I am in entire agreement with this finding, and Counsel for all the parties

[1] *41 N. L. R. 78.*

[2] *39 N. L. R. 186.*

in this proceeding conceded that this finding is correct, and to that extent the consideration of this matter is simplified. But there were many other matters urged before me, which I shall have to consider.

The Registrar-General in his affidavit based his refusal to alter his register upon certain observations made by Soertsz J. in refusing the application for mandamus in the previous proceeding, in particular that the amendment of the register would place the intervenient "in a position of great disadvantage and even of great danger". The Registrar-General stated that he acted on advice given by the Attorney-General. I am satisfied that in this respect the Registrar-General has fallen into the same error which Soertsz J. warned him against, and has purported to exercise a discretion which in fact he did not possess.

At the argument, Counsel for the Registrar-General did not contest the questions that the Sabha had the right to expel the intervenient, or that the expulsion was properly and correctly made. He contended that the present petitioners have no right to the performance of the duty which they seek to impose on the Registrar-General. He relied on *R. v. Lewisham Union*[1], in which it was held that the applicant for a writ of *mandamus* "must have a specific legal right or duty to enforce the performance of the duty left unperformed". This point was also emphasized by Avory J. in *R. v. The Manchester Corporation*[2]. But in this case Avory J. was the dissentient Judge, and the majority of the Court (Lord Alverstone C.J. and Pickford J.) held that the petitioners, who had appeared in opposition to a Bill before Parliament, and, with the object of protecting their own interests, had procured the insertion in the Bill of a clause imposing a particular duty on the promoters and others, had a sufficient interest in the performance of the duty to support an application for a *mandamus* to enforce it, although they were not named in the clause. In the words of Lord Alverstone, the petitioners, "having procured the insertion in the Bill of a special clause for the protection of the general public, and through them of their own trade interests also, are in a superior position to that of a common informer". Now, I wish to refrain, as Lord Alverstone did, from deciding what amount of interest will entitle a person to apply for a *mandamus.* That may well be decided in a proper case. But in the present case the petitioners are members of a body, which has claimed the right to expel the intervenient, and has actually ordered his expulsion. I think they are persons who have a special and sufficient interest in seeking to implement that expulsion, by securing the entry of that fact in the statutory registers, and that they stand on a footing different to that of common informers.

Two further points in this connection may be mentioned. The Maha Nayaka Thera is specially named in section 41 (5) as the person who is required to convey the fact of the alteration to the Registrar-General, and, in consequence, he may well be regarded as having a special and sufficient interest to apply for a *mandamus.* I do not think this fact in any way derogates from the right of the members of the Sabha to seek a similar remedy. Further, the fact that only seventeen out of the twenty members have joined in the petition does not in my opinion affect the question. The practical difficulty of unanimity in matters of this kind may well

[1] *(1897) 1 Q. B. D. 498 ; 76 L. T. 324.*

[2] *(1911) 1 K. B. D. 560 ; 104 L. T. 54.*

be realized, and, in any event, the seventeen members who have joined in the petition base their right upon the fact of membership of the Sabha, and they are the full body of members who decided to request the Registrar-General to make the necessary amendment in his register.

The considerations I have so far examined do not dispose of this matter. Very serious questions arise as to whether I should exercise the discretion which is vested in me.

In the first place, it is argued for the intervenient that this is a second application for *mandamus*, and should therefore be refused. It has no doubt been laid down that a second application made on fresh materials without new facts, after a first application has failed, should be disallowed. But in the present case, besides the first petitioner, the Maha Nayaka Thera, there are a number of new parties, who were not petitioners before. The Maha Nayaka Thera himself may possibly be liable to be defeated under the rule. But what about the other petitioners? Their claim to the writ of *mandamus* is based upon a right materially different to that of the Maha Nayaka Thera. I hardly think that these other petitioners can be regarded as making a second application. This argument of the intervenient's Counsel accordingly fails.

It has further been contended for the intervenient that the petitioners are actuated by improper motives in making this application. I have very carefully considered the affidavits in this connection, as Soertsz J. did in the previous proceeding. I refrain from deciding on the merits of the matter, but certain facts emerge, of which I must take notice. A very considerable dispute arose in relation to the appointment to the vacant office of the Viharadhipathi of Sripadasthana. This resulted in two separate elections being held, in one of which the intervenient claimed that he was appointed to that office, and in the other Morontuduwe Sri Dhammananda Thero claimed that he was appointed. It appears clear that not only the Maha Nayaka Thera but also the Sabha adopted the cause of Dhammananda Thero. It was in relation to certain acts done by the intervenient in prosecution of his claim to the office in question that the intervenient was expelled by the Sabha. I do not propose to discuss whether this expulsion was justified or not. There are two versions in the affidavit. It is a matter for some surprise that this question has not yet been submitted to a legal tribunal for determination. Instead, the intervenient was prosecuted under section 42 of Chapter 222 for holding himself out as a priest though his name was not on the register. The intervenient was acquitted on the ground that his name was on the Registrar-General's register, and that was the register contemplated by section 42. The acquittal was on June 26, 1939, and a subsequent application in revision was refused on October 25, 1939. The tenth petitioner was one of the principal witnesses against the intervenient in that cause. I am not satisfied that the real motive of the Maha Nayaka Thera and of the other members of the Sabha in pressing for a writ of *mandamus* is not to obtain a bloodless victory in the matter of the appointment to the office of Viharadhipathi of Sripadasthana. For, as Soertsz J. pointed out in the previous case, once the intervenient's name is taken off the register, he is liable to prosecution. His position becomes one of great embarrassment and even danger.

After an examination of all the facts, I am not satisfied as to the propriety of the motives of the petitioners, and this is a good ground for refusing the application.

There is another ground strongly urged by Counsel for the intervenient why I should not exercise my discretion in favour of the petitioners, namely, the considerable delay in making the present application. The alleged expulsion of the intervenient by the Sabha took place on May 26, 1935. On May 29 of that year the Maha Nayaka Thera informed the Registrar-General of the alteration in the register. The Registrar-General refused to make the alteration. The original application of the Maha Nayaka Thera for *mandamus* was made on January 26, 1937, and was refused by Soertsz J. on May 27, 1937. Subsequent requests by the Maha Nayaka Thero to the Registrar-General to alter his register were refused on September 4, 1937, May 19, 1938, and June 11, 1938. The first request to the Registrar-General by the tenth petitioner as Chief Secretary to the Sabha was made on December 7, 1938, and was refused on January 11, 1939, on the footing that the Sabha had no right to make the request. In spite of that there was other correspondence, and similar answers were again given by the Registrar-General. The present application for *mandamus* was made about June 20, 1940.

It is clear that the members of the Sabha have remained quiescent for a very long time, not only since the date of the alleged expulsion of the intervenient, but even since the date of the refusal of the Maha Nayaka Thera's application for a writ of *mandamus*. In fact, the Sabha only became active in December, 1938, and even after their first request was refused in January, 1939, they made no application to this Court for about seventeen months. The petitioners have offered no explanation of the very considerable delay in making their application. It has been argued with some force by Counsel for the intervenient that, if this *mandamus* were granted, the intervenient may be forced himself to bring an action in Court, and that, if he did so now after this lapse of time, he was liable to be defeated on the ground of prescription. I may say that I should not have been deterred from taking any action in this matter merely because one or other of the parties was forced to bring an action. In fact, I think that is a result much to be desired, and the most appropriate method of obtaining a decisive finding. But at the same time I am not disposed to lay upon the intervenient an undue disadvantage, which can be attributed to the failure of the petitioners to take action within a reasonable time. Further, I must refuse to assist any manœuvre for position by any of the parties to this proceeding. I think this also is a good ground for exercising my discretion against the petitioners—*vide* *Madanayake v. Schrader*[1].

It is to be regretted that the difference between the register of the Maha Nayaka Thera and that of the Registrar-General should continue. But I am not satisfied that the petitioners have no proceeding available to them to establish the expulsion.

The present application must be refused, and the rule discharged. The Registrar-General, in view of my findings, is not entitled to any costs, but the petitioners will pay the costs of the intervenient.

Rule discharged.

[1] *29 N. L. R. 389*