A. R. PERERA AND OTHERS
vs
CENTRAL FREIGHT BUREAU OF SRI LANKA AND ANOTHER

COURT OF APPEAL
MARSOOF J. (P/CA) AND
SRI SKANDARAJAH, J.
CA 999/2003
JULY 13
AUGUST 23 AND SEPTEMBER 17, 2004

Writ of certiorari - Locus standi - Traditional view, conservative view and liberal view - Companies Act, No. 17 of 1982 - Who are busy bodies ?- Constitution Articles 12, 141, 17, 126, and 140 - Rationale for expanding canvas of locus standi.

The 1st and 2nd petitioners - the Chairman and Secretary General of the Ceylon Association of Ships Agents (CASA) consisting of 113 members who are shipping agents and the 3rd petitioner who is a member of the Executive Committee of CASA and a director/shareholder of Malship Ltd., which company is engaged in the business of a shipping agent, challenged the order made by the 1st respondent imposing certain levies and service charges.

The Executive Committee of the CASA had determined and resolved that it is imperative that CASA, through the petitioners file an application on behalf of its membership with a view to obtaining relief and redress. The petitioners also claimed that the resolution/determination of the CASA was ratified at an extraordinary general meeting of CASA. When the matter was taken up for argument the respondent took up a preliminary objection that the petitioners

lack *locus standi*, as CASA is a company limited by guarantee incorporated under the Companies Act with the power to sue and be sued in its corporate name.

Held :

(i) The petitioners are all persons whose interests are affected by what is alleged to have been done by the respondents. The 1st and 2nd respondents have sufficient interest in the matter as office bearers of CASA, the 3rd respondent as a member of the Executive Committee and an authorized representative of Malship, a corporate shipping agent, have sufficient interest in the matter in question. Even if the petitioners are to be treated as mere members of the public, they have sufficient interest in the matter to distinguish them from the esteemed category of "busy bodies".

***Per* Marsoof, J. P/CA,**

"Time and again our courts have repeated that the fact that the irregularity or the grievance for which redress is sought is shared by a large number of people or society as a whole would not prevent one of many affected persons from seeking relief from courts.

There can be no doubt that the petitioners are all persons whose interests are affected by what is alleged to have been done by the respondents. Sri Lankan courts have been quick to recognize standing of any citizen to seek relief against public authorities that stray outside their legitimate bounds."

APPLICATION for a writ of certiorari.

Cases referred to :

1. *Durayappa* vs *Fernando* 69 NLR 265
2. *R* vs *Paddington Valuation Office* (1996) 1 QB 380 at 401
3. *Premadasa* vs *Wijewardena & Others* (1991) 1 Sri LR 333 at 343.
4. *R* vs *Greater London Council exparte Blackburn* (1968) 2 QB 118
5. *Mc Whirter* vs *Independent Broadcasting Authority* (1973) QB 629
6. *R* vs *Inland Revenue Commissioners ex p. National Federation of Self Employed and Small Industries* (1982) AC 617.
7. *Bandaranayake* vs *De Alwis & Others* (1982) 2 Sri - LR 664 at 682

8. *Meril* vs *Dayananda de Silva* (2001) 2 Sri LR at 41-42
9. *Forbes & Walier Tea Brokers* vs *Maligaspe and others* (1998) 2 Sri LR 378.
10. *Mediwake and others* vs *Dayananda Dissanayake, Commissioner of Elections and others* (2000) 1 Sri LR 177
11. *Sunila abeysekera* vs *Ariya Ruabasinghe* (2001) 1 Sri LR 315
12. *Leader Publications* vs *Ariya Rubasinghe* (2001) Sri LR
13. *Lilanthi de Silva* vs *Attorney General* (2003) Sri LR 155
14. *Bulankulame and others* vs *Secretary, Ministry of Industrial Development and others* (2000) 3 Sri LR 243
15. *D. U. M. Jayatilake and others* vs *Jeevan Kumaranatunga and others* CAM 29.7.2004.
16. *S. P. Gupta* vs. *Union of India* (1982) ARI (SC) 149
17. *Akhila Bharatiya Grahak Panchayat* vs *A. A. S. E. Brand* (1983) AIR (Andre Pradesh) 283
18. P. *Nella Thamby Rosa* Vs. *Union of India* (1984) AIR (SC) 74

hibly Aziz, P. C. with *P. Gunaratne* and *S. Ahamed* for petitioners.

Kanag-Iswaran, P. C. with *Nigel Bartholomeuz* for 1st respondent.

M. R. Ameen, State Counsel for 2nd respondent.

Cur.adv.vult

January 10, 2005

SALEEM MARSOOF, J. P/CA

The 1st and 2nd Petitioners purport to be respectively the Chairman and Secretary-General of the Ceylon Association of Ships' Agents (CASA) consisting of 113 members who are shipping agents, and the 3rd Petitioner purports to be a member of the Executive Committee of CASA and a Director and shareholder of Malship Ceylon Limited, which company is engaged in the business of a shipping agent. The Petitioners state in their petition that the members of CASA have been concerned with, and aggrieved by, the imposition of certain levies and service charges by the 1st Respondent, and as such, the Executive Committee of CASA determined and resolved that it is imperative that CASA through the Petitioners file

this application on behalf of its membership with a view of obtaining relief and redress. The Petitioners claim that the said determination and resolution of the Executive Committee of CASA were ratified by the members of the Ceylon Association of Ships' Agents (CASA) at an Extraordinary General Meeting of CASA held on 29th May 2003.

In paragraph 6 of their petition, the Petitioners expressly state that they are invoking the jurisdiction of this Court in terms of Article 140 of the Constitution in their individual capacities as well as on behalf of the members of the CASA respectively as President, Secretary General and Member of the Executive Committee and as representatives of the CASA. In addition the 3rd Petitioner, as the representative of Malship Ceylon Limited, which is engaged directly in the business of shipping agent, claims that he has become party to this application on behalf of the said company in addition to his capacity as a member of the Executive Committee of CASA.

When this case was taken up for argument learned Counsel for the 1st Respondent took up a preliminary objection based on paragraph 1 of the Statement of Objections filed by the 1st Respondent that the Petitioners cannot have and maintain this application as they do not have any right in themselves or the *locus standi* to institute and maintain this application, in that, the Ceylon Association for Ships' Agents (CASA), is a company limited by Guarantee, incorporated under the Companies Act, No. 17 of 1982 on 18th October 2000 with the power to sue and be sued in its corporate name. After hearing submissions of learned President's Counsel for the Petitioners and the learned President's Counsel for the 1st Respondent on this preliminary objection, Court granted time for learned Counsel to file written submissions. At the instance of State Counsel appearing for the 2nd Respondent, Court also made an order discharging the 2nd Respondent from these proceedings as no relief had been prayed for against the said Respondent in the petition.

Learned President's Counsel for the 1st Respondent submits that this application has to be dismissed *in limine* as the petitioners cannot have and maintain this purported application for the relief prayed for by them, as they do not have any right in themselves or the *locus standi* to institute and maintain this application. He submits that the lack of *locus standi* has been recognised as a fundamental limitation in the granting of prerogative

remedies in terms of Article 140 of the Constitution. He states that the Ceylon Association for Ships' Agents (CASA), is a company limited by guarantee incorporated under Section 21(1) of the Companies Act, No. 17 of 1982 on 18th October 2000, with the power to sue and be sued in its corporate name as evidenced by the Memorandum of Association and Articles of Association marked 'IR' annexed to the Statement of Objections of the 1st Respondent. He submits that CASA is a distinct corporate body consisting of shipping agents having corporate status and is not made up of individuals, and in any event it possesses a legal personality distinct from its members or office bearers. Section 21 (1) of the Companies Act, No. 17 of 1982 provides that-

> "Where it is proved to the satisfaction of the Registrar that an association whether of recent origin or otherwise about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, sport, or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects and to prohibit the payment of any dividends to its members, the Registrar may by license direct that the association may be registered as a company, with limited liability, without the addition of the word "limited" to its name, and the association may be registered accordingly and shall on registration enjoy all the privileges and (subject to the other provisions of this section) be subject to all the obligations of a limited company".

It is submitted theretofore that it was only CASA, as a limited company and a body corporate, that could have instituted this application as it possesses the necessary corporate status to sue and be sued in its name and on behalf of its members who are shipping agents and have been called upon to pay the charges and commissions in terms of the Central Freight Bureau Law. It is further submitted that the 1st and 2nd Petitioners as office bearers of CASA have no right or status in their individual capacities and cannot have and maintain this application. Similarly, it is submitted that the 3rd Petitioner as a member of the Executive Committee of CASA and a Director and shareholder of Malship Ceylon Limited does not have any right or status in his individual capacity and cannot have and maintain this application on behalf of CASA or Malship Ceylon Ltd. It is further submitted that in the circumstances the law would consider them "meddlesome busybodies" for they have no right in their individual capacities distinct and different from that of CASA or Malship.

Although the learned Counsel for the 1st Respondent does not cite any case law in his written submissions in regard to the question of locus standi which he has chosen to argue on first principles, he could easily have relied on the classic decision in *Durayappa V. Fernando*[1] in which the Privy Council held that the Mayor of a Municipal Council cannot seek redress from courts with respect to a legal wrong or injury caused to a Municipal Council. Lord Upjohn expressed the opinion of the Court at page 274 in these words-

> "Their Lordships therefore are clearly of opinion that the Order of the Minister on 29th May 1966 was voidable and not a nullity. Being voidable it was voidable only at the instance of the person against whom the Order was made, that is the Council. But the Council has not complained. The appellant was no doubt Mayor at the time of its dissolution but that does not give him any right to complain independently of the Council."

It is noteworthy that in the case before us, as much as in *Durayappa v. Fernando*, no explanation has been offered by any of the Petitioners as to why CASA and/or Malship have not sought to invoke the jurisdiction of this Court.

Learned President's Counsel for the Petitioner submits that our law relating to locus standi has developed a great deal from the days of *Durayappa v. Fernando, (Supra)* and in view of the liberal attitude towards standing adopted by the Courts, the Petitioners in the present case are in fact entitled to have and maintain this application. He submits that the law has moved forward and become progressive, and relies on the following dictum of Lord Denning, in *Rv Paddington Valuation Office*[2] –

> "The Court would not listen, of course to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done."

Our courts too have applied same test in regard to standing. For instance, in *Premadasa v Wijewardena and others*[3] Tambiah CJ observed that-

> "The law as to *locus standi* to apply for *certiorari* may be stated as follows : The writ can be applied for by an aggrieved party who has a

grievance or by a member of the public. If the applicant is a member of the public, he must have sufficient interest to make the application."

There can be no doubt that the Petitioners are all persons whose interests are affected by what is alleged to have been done by the Respondents. The 1st and 2nd Petitioners have sufficient interest in the matter, as office bearers of CASA, and the 3rd Respondent as a member of the Executive Committee of CASA and authorized representative of Malship, a corporate shipping agent, have sufficient interest in the matter to be regarded as aggrieved parties who have a genuine grievance. Even if the Petitioners are to be treated as mere members of the public, they have sufficient interest in the matter to distinguish them from the esteemed category of 'busybodies'.

In fact, in recent times English Courts have shown great latitude in regard to standing in the context of prerogative remedies such as *certiorari* and *mandamus*. In *R V. Greater London Council ex. parte Blackburn*[4] an applicant was permitted to pursue the prerogative writ of mandamus in proceedings brought against the Police, even though his interest was no greater than the interest of other persons in general. Lord Denning in *Mc. Whirter V. Independent Broadcasting Authority*[5] referring to the Blackburn case (supra) page 649 observed that-

"Mr. Blackburn had a sufficient interest even though it was shared with thousands of others.....We heard Mr. Blackburn in his own name. His intervention was both timely and useful".

As Lord Denning noted in *R v Inland Revenue Commissioners ex p. National Federation of Self Employed and Small Business Ltd.*,[6] English Courts have orchestrated the generous view that "if there is good ground for supposing that a government department or public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of her Majesty's subjects, then any one of those offended or injured can draw it to the attention of the court of law and seek to have the law enforced". In the course of his judgment in the same case, Lord Diplock observed as follows-

"It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public spirited tax

payer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of court to vindicate the rule of law and get the unlawful conduct stopped."

The change in legal policy reflected in the decision of the House of Lords in this case was considered by Lord Diplock to be a major step "towards a comprehensive system of administrative law" which he regarded as the greatest achievement of the English Courts during his life time.

The rationale for the expanding canvas of locus standi in the context of *certiorari* and prohibition was explained by H. W. R. Wade – *Administrative Law* (8th Edition) pages 362 to 363 in the following words-

> "The prerogative remedies, being of a 'public' character as emphasized earlier, have always had more liberal rules about standing than the remedies of private law. Prerogative remedies are granted at the suit of the Crown, as the titles of the cases show ; and the Crown always has standing to take action against public authorities, including its own ministers, who act or threaten to act unlawfully. As Devlin J said: Orders of certiorari and prohibition are concerned principally with public order, it being the duty of the High Court to see that inferior courts confine themselves to their own limited sphere". In the same sense Brett J had said in an earlier case that the question in granting prohibition "is not whether the individual suitor has or has not suffered damage, but is, whether the royal prerogative has been encroached upon by reason of the prescribed order of administration of justice having been disobeyed". Consequently the court is prepared to act at the instance of a mere stranger, though it retains discretion to refuse to do so if it considers that no good would be done to the public."

Wade further goes on to observe at page 683 that-

> "....the House of Lords is clearly now determined to prevent technicalities from impeding judicial review so as to protect illegalities and derelictions committed by public authorities".

Sri Lankan Courts too have been quick to recognize standing of any citizen to seek relief against public authorities that stray outside their legitimate bounds. In *Bandaranaike v. de Alwis and Others*[7] at 682 Wimalaratne J. observed that "every citizen has standing to invite the

Court to prevent some abuse of power, and in doing so he may claim to be regarded not as a meddlesome busybody, but as a public benefactor." In *Meril vs. Dayananda de Silva*[8] at 41-42 Gunawardana J observed "I strongly feel that.....denying *locus standi* to an applicant for judicial review for no better reason than that his interest or grievance is shared by many others in common with the applicant is as illogical and irrational as refusing to treat any one member of the public for a disease which has assumed proportions and has affected virtually the entire community". In *Forbes & Walker Tea Brokers v. Maligaspe and Others*[9] Gunawardana J went on to trace the developments in the law in this field and observe at page 406 that-

> "The traditional view is that an applicant for *certiorari* must show some interest before being accorded standing.....The older, rather the conservative, view is that applicant must show that he has legal capacity to challenge the act or decision by means of prerogative writs in that he is an "aggrieved person" in the sense that there is some harm personalized to the applicant. In other words, the applicant is required to establish or prove some individual harm over and above that of the general community or the public at large-although the waning of the rigid reliance on the concept that an applicant must have an interest of his own at stake, seems to be a universal trend. A necessary corollary of the rule that the applicant ought not to be accorded standing because his (applicant's) requirement or grievance is one which is complained of in common with the rest of the public is to deny to the applicant access to court for no other or better reason than that governmental irregularity or illegality does affect a large number of people. This seems irrational for as Craig (tutor in law-Worcester College - Oxford) had said : To deny access in such a case seems indefensible. If the subject matter of the case is otherwise appropriate for judicial resolution.....to erect a barrier of "no standing" would be to render many important areas of governmental activity immune from censure for no better reason than that they do affect a large number of people. One might be forgiven for thinking that the common sense of the reasonable man would indicate the opposite conclusion ; that the wide range of people affected is a positive reason for allowing a challenge by someone".

In Sri Lanka there has been considerable progress in the public interest litigation arena, and the courts have liberalized rules relating to standing

or *locus standi,* and permitted not only persons aggrieved but also others to challenge violations of fundamental rights. Cases such as *Mediwake and Others v Dayananda Dissanayake, Commissioner of Elections and* Others[10] 177, *Sunila Abeysekera V. Ariya Rubasinghe*[11] *leader Publications V Ariya Rubasinghe*[12] *Lilanthi De Silva V. Attorney General*[13] are landmark decisions of our Supreme Court which reflect this liberal approach. As Amerasinghe J observed in *Bulankulama* and Others *V. Secretary, Ministry of Industrial Development and others*[14] (better known as the Eppawala case) at page 258 –

> "The Court is concerned in the instant case with the complaints of individual petitioners. On the question of standing, in my view, the petitioners, as individual citizens, have a Constitutional right given by Article 17 read with Articles 12 and 14 and Article 126 to be before this Court. They are not disqualified because it so happens that their rights are linked to the collective rights of the citizenry of Sri Lanka - rights they share with the people of Sri Lanka. Moreover, in the circumstances of the instant case, such collective rights provide the context in which the alleged infringement or imminent infringement of the petitioners' fundamental right ought to be considered. It is in that connection that the confident expectation (trust) that the Executive will act in accordance with the law and accountably, in the best interests of the people of Sri Lanka, including the petitioners, and future generations of Sri Lankans, becomes relevant".

Time and time again, our courts have repeated that the fact that the irregularity or the grievance for which redress is sought is shared by a large number of people or society as a whole would not prevent one of the many affected persons from seeking relief from the Courts. In the recent case of *D. U. M. Jayatilleka and others V. Jeevan Kumaratunge and others*[15] it was observed by Sriskandarajah J. that -

> "The standing rules applicable to applications for prerogative writs have to be considered in the light of the developments taking place in this sphere of relevant law."

Similarly, when one looks across the Palk Straits, one cannot help but notice the landmark decision of the Indian Supreme Court in *S. P. Gupta V. Union of India* [16] holding that lawyers have a vital interest in the independence of the judiciary, and therefore have standing to agitate before

courts important issues affecting the judiciary, This decision has since been followed in several other cases involving consumer concerns, such as *Akhila Bharatiya Grahak Punchayat v A. P. S. E. Board*[17] in which a Consumer Council was held to have *locus standi* to challenge the action of an electricity board for increasing the rates of electricity, and *P. Nella Thampy Thera v Union of India*[18] in which the Supreme Court of India entertained a petition at the behest of a railway commuter against the Indian Railways for improving the railway services.

In the present application before this Court, the Petitioners, being office bearers of the Ceylon Association of Ships' Agents as well as some of them being associated with companies upon whom the purported fee was imposed, clearly have a sufficient interest in challenging the imposition of the purported fee, and are not 'mere busybodies' who are trying to fish in troubled waters. It has been specifically pleaded and averred in the petition that the Petitioners have come to Court on behalf of the members of the CASA as well as in their personal capacities.

I do not see any merit in the preliminary objection raised on behalf of the 1st Respondent and have no alternative but to overrule the same.

SRISKANDARAJAH, J. - I agree.

Preliminary objection overruled; matter set down for argument.