

1961

Present : Tambiah, J.

M. D. CHANDRASENA and 2 others, Petitioners, and S. F. DE SILVA
(Director of Education), Respondent

*S. C. 540-541—Applications for Writs of Mandamus and Quo
Warranto in terms of section 42 of Courts Ordinance*

*Mandamus—Certiorari—Intervention of parties—Permissibility—Courts Ordinance,
s. 42.*

In an application for a writ in the nature of *mandamus* or *certiorari* persons other than those who are parties to the application are not entitled to take part in the proceedings as intervenients.

APPLICATIONS for writs of *mandamus* and *certiorari*.

C. D. S. Siriwardene, with *G. D. C. Weerasinghe* and *M. T. M. Sivardeen*, for the intervenient-petitioner.

H. V. Perera, Q.C., with *E. B. Wikramanayake, Q.C.*, *G. T. Samarawickreme* and *W. T. P. Goonetilleke*, for the petitioner.

V. Tennekoon, Senior Crown Counsel, with *B. C. F. Jayaratne*, Crown Counsel, for the respondent.

Cur. adv. vult.

March 7, 1961. TAMBIAH, J.—

When these applications were taken up for hearing, Mr. C. D. S. Siriwardene stated that he was appearing for an intervenient who wished to be heard in these applications. He also stated that he desired to place certain facts before the Court. In support of the intervention he contended that, in matters of this kind, the English common law would apply, and cited the following dictum of Lord Radcliffe in *Nakkuda Ali v. Jayaratne (Controller of Textiles)*¹: "Moreover there can be no alternative to the view that when s. 42 (of the Courts Ordinance) gives power to issue these mandates 'according to law' it is the relevant rules of English common law that must be resorted to in order to ascertain in what circumstances and under what conditions the Court may be moved for the issue of a prerogative writ. These rules then must themselves guide the practice of the Supreme Court in Ceylon."

Mr. H. V. Perera, Q.C., who appeared for the petitioner, contended that the dictum did not go to the extent of stating that the *procedure* applicable under the English common law should apply to Writs in the nature of *Mandamus* or *Certiorari* in Ceylon. It seems to me that the English common law has been adopted by our courts to determine the principles that should guide the court in either granting or refusing these writs. It

¹ (1950) 51 N. L. R. at pp. 460-461.

has never been the practice of this Court to allow persons other than those who are parties to the application for writs to intervene in the proceedings. Learned Counsel for the intervenient was unable to cite any judicial decision which has recognised the principle that under the English common law an intervenient may appear in such applications.

He also referred me to Rule 7, Order 59, of the rules made by the Courts in England, permitting the Court to allow an intervenient to take part in proceedings initiated by way of a writ of Mandamus. These rules clearly have no application in Ceylon. Although the Courts Ordinance¹ empowered the Supreme Court to make rules governing its own procedure, no rules have yet been framed to enable an intervenient to take part in proceedings for the issue of the writs of Mandamus or Certiorari to which he is not a party.

Further, I am reluctant to allow this intervention for the additional reason that the recognition of such a principle would open the floodgates, as it were, to a torrent of similar applications, and thus impede the functioning of the Courts.

Hence, the application to intervene in these proceedings and file affidavits is refused. However, this order will not prevent Mr. Siriwardene being heard as *amicus curiae* on any question of law that may arise, on which his assistance may be required.

Application refused.

¹ Cap. 6.
