

**WICKRAMASINGHE AND ANOTHER**  
**v.**  
**SENANAYAKE, MINISTER OF MEDIA, TOURISM**  
**AND AVIATION AND OTHERS**

COURT OF APPEAL  
RANARAJA, J.  
C.A. NO. 373/97  
OCTOBER 13, 1997

*Writ of Certiorari/Prohibition – Sri Lanka Rupavahini Corporation Act , No. 6 of 1982 – ss. 28, 30 (1), 31 – License for establishment and maintenance of private Television Broadcasting Station – Power of Minister to cancel license once issued – Privilege or right under s. 28 – Could the Minister appoint an Inquiring Officer to hold an Inquiry under Act, No. 6 of 1982 – S. 17, Interpretation Ordinance.*

The 3rd respondent was appointed by the 1st respondent Minister of Media, to inquire into 5 charges against the petitioner. The petitioner sought to quash the order made by the 3rd respondent and further sought to prohibit the respondents from holding the said Inquiry.

**Held:**

1. There is no provision in the Sri Lanka Rupavahini Corporation Act or any regulation framed thereunder which enables the 1st respondent Minister, or 2nd respondent Secretary to the Ministry to cause the 3rd respondent to hold an inquiry into the amended charges.
2. It would be preposterous for a Minister to claim that the licence which was issued to the petitioner was a privilege, which could be withdrawn at his whim and fancy. The least the petitioner would expect is a fair trial in a court of law for offences set out in the Sri Lanka Rupavahini Corporation Act or regulations framed thereunder prior to the cancellation of the licence issued to him.

**APPLICATION** for Writs of Certiorari and Prohibition.

*K. N. Choksy P.C.*, with *Luxman Perera* for petitioner.

*P. G. Dep*, D.S.G for respondents.

*Cur. adv. vult.*

October 13, 1997

**DR. RANARAJA, J.**

This application is for *inter alia*, (a) a Writ of Certiorari quashing the decision (P17) of the 3rd respondent, who was appointed by the 1st respondent Minister of Media, to inquire into five charges against the petitioner appended to letter P7 dated 18.2.97, sent by the 2nd respondent Secretary, Ministry of Media, (b) a Writ of Prohibition prohibiting the 1st and/or 2nd respondent from causing the said inquiry to be held and (c) a Writ of Prohibition prohibiting the 3rd respondent from holding the said inquiry.

Learned D.S.G for the 1st and 2nd respondents at the outset submitted that as instructed by the 2nd respondent, he had no objection to relief (a) above, being granted. Of consent of the petitioner, 1st and 2nd respondents, I therefore issue a Writ of Certiorari quashing the order P17 of the 3rd respondent. It is to be noted that notice has been served on the 3rd respondent by registered post on 5.5.97. He has not participated in these proceedings.

Learned counsel for the petitioner, however not being satisfied with relief in terms of (a) above, submitted that he is entitled to reliefs in prayers (b) and (c) above, on the law as it stands. He submitted that section 28 of the Sri Lanka Rupavahini Corporation Act, No. 6 of 1982, which reads:

- "(1) No person other than the Corporation established under this Act shall maintain a television broadcasting station unless such a person has obtained a licence from the Minister.
- (2) The Minister may in consultation with the Corporation issue to any person a licence for the establishment and maintenance of a private television broadcasting station.
- (3) No licence shall be issued by the Minister unless he is satisfied that the person applying for a licence has such technical, financial and professional qualifications as may reasonably be required for the purpose of establishing and maintaining a private broadcasting station."

does not give the Minister a statutory power to cancel a licence once issued. In the circumstances, it was further submitted that the only other way the Minister could have vested himself with that power

was by acting under the provisions of section 31 of the Act, which by subsection *inter alia*, (1) gives the power to the Minister to make regulations relating to all or any of the matters prescribed or in respect of which regulations are required or authorised to be made. If such regulations had been framed under section 31 read with section 17 (1) (d) of the Interpretation Ordinance, the Minister could have conferred upon himself the power to issue or refuse licences under the Sri Lanka Rupavahini Corporation Act and also have provided for the cancellation of such licences by Court.

On an examination of the provisions of section 17, of the Interpretation Ordinance it is clear that where such regulations are framed for the cancellation of a licence, prior to such cancellation certain conditions must be satisfied. *Inter alia*, (a) penalties for the breach of any rules must be clearly set out, (section 17 (1) (b)), (b) the cancellation of a licence is possible only by Court upon the conviction of the offender (licence holder) on two or more occasions for the breach of such rules – (section 17 (1) (d) (ii)). The Minister cannot confer upon himself any power to cancel a licence, once granted, by framing rules to that effect. The principle underlying those provisions being that one must not be the Judge of his own cause.

In the case of the Sri Lanka Rupavahini Corporation Act, certain offences are set out in section 30 (1). Any person found guilty of such offence and convicted by Court, would have been liable to have a licence granted to him under section 28 cancelled by Court, if there were rules framed under section 31 to that effect. However there are none.

In the alternative, the Minister could have amended section 28 of the Act. In fact, steps had been taken in that direction by the Sri Lanka Broadcasting Authority Bill, (vide section 7 (7) and section 13 in the 3rd schedule of that Bill) which was held to be unconstitutional by the Supreme Court.

It is the submission of learned counsel that in the absence of any powers conferred on the Minister by statute or other provisions of law, the Minister could not have issued the amended charge-sheet appended to P7, nor appointed the 3rd respondent to inquire into those charges.

Learned D.S.G on the other hand argued that the petitioner had only a "privilege" and not a 'right' under section 28 of the Act to a licence, which the Minister could withdraw at his discretion. If what the learned D.S.G states is correct, such an intention should have been expressly stated in licences P26 and P27. Even though the Minister has reserved the right to impose other conditions from time to time, no conditions which render the petitioner liable to be charged for any breach or cancellation/withdrawal of the licence, have been incorporated in either P26 and P27. It would be a preposterous for a Minister to claim, that the licence which was issued to the petitioner was a privilege, which could be withdrawn at his whim and fancy. The petitioner has invested large sums of money in establishing and developing the Television Broadcasting Station. The least the petitioner would expect is a fair trial in a Court of Law for offences set out in the Sri Lanka Rupavahini Corporation Act or regulations framed thereunder prior to the cancellation of the licence issued to him.

Other statutes have provided for the cancellation of licences for specific reasons. For example, section 27 (1) of the Excise Ordinance provides, that subject to such restrictions as the Minister may prescribe, the authority granting any licence permit, pass under this Ordinance may cancel or suspend it . . . , (b) in the event of any breach by the holder of such licence, permit or pass . . ." (c) If the holder thereof is convicted of any offence under this Ordinance, or any other law for the time being in force relating to revenue . . .". In the Telecommunications Ordinance, section 11 grants the Telecommunication Authority the power to revoke and determine any licence granted for the installation, etc., of any telegraph or the importation, possession, etc., of wireless telegraphy apparatus, for the breach of any conditions contained therein.

Similarly, other statutory provisions permit an authority to appoint an inquirer before any disciplinary action may be taken against another. Thus section 277 (1A) of the Municipal Councils Ordinance grants the Minister the power to appoint a retired judicial officer to inquire into and report upon the matters set out therein before taking action under section 277 (1) to remove a mayor, councillors or dissolve a Council.

All the statutes referred to, have expressly provided for the power and procedure to be followed by an authority before he/she could deprive another of a licence or remove him from office.

"Any administrative act or order which is *ultra vires* or outside jurisdiction is void in law, ie: deprived of legal effect. This is because in order to be valid it need statutory authorisation, and if it is not within the powers given by the Act, it has no legal leg to stand on. The Court will then quash it or declare it to be unlawful or **prohibit** any action to enforce it. . . . an act found to be outside jurisdiction (*ultra vires*) is void and a nullity, being destitute of the statutory authority without which it is nothing." *Wade & Forsyth - Administrative Law*. 7th ed., p. 43.

The learned D.S.G was unable to point to any section the Sri Lanka Rupavahini Corporation Act or any regulation framed under the provisions of that Act, which enables the 1st respondent Minister or the 2nd respondent Secretary to the Ministry, to cause the 3rd respondent to hold an inquiry into the amended charges appended to letter P7. The acts of the 1st and 2nd respondents, in serving a charge-sheet on the petitioner and appointing the 3rd respondent to hold an inquiry, are not within their statutory powers and therefore void in law and a nullity.

Accordingly, I issue Writs of Prohibition, (a) prohibiting the 1st and/or 2nd respondent from causing an inquiry to be held into the amended charges appended to P7, (b) prohibiting the 3rd respondent from holding the inquiry into the said charges.

The application is allowed in terms of prayers (b), (c) and (d) to the petition without costs.

*Application allowed.*