

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

In The matter of an application
under Article 140 of the Constitution
for Mandates in the nature of Writs
of Certiorari, Prohibition and Quo
Warranto.

Loku Banda Aluvihare,
No.01, Reservoir Road,
Kandy.

Petitioner

CA Writ Application No.603/10

Vs.

1. Sarath Ekanayake,
Chief Minister of Central Province
and Minister in charge of Local
Government,
Chief Minister's Office,
Secretariat,
Yatinuwara Street,
Kandy.
2. Chandana Tennakoon,
Municipal Commissioner
The Kandy Municipal Council,
Kandy.

3. Tikiri Kobbekkaduwa,
Governor,
Central Province,
Governor's Secretariat,
Palace Square,
Kandy.
4. K.L. Suminda Wickramasinghe,
Deputy Mayor
The Kandy Municipal Council,
Kandy.
5. N. Mahendrarajah
Inquiring Officer
No.176/3, Bandaranaike Mawatha
Kegalle.
6. Assistant Returning
Officer/Elections Officer
Elections Office,
Kandy.
7. Commissioner of Elections
The Election Secretariat,
Sarana Mawatha,
Rajagiriya.

RESPONDENTS

BEFORE : S.SRISKANDARAJAH, J, (P/CA).
 COUNSEL : M.A.Sumanthiran with Viran Corea and S.de.Fonseka
 for the Petitioners.
 Upul Ranjan Hewage with L.H.Sumanasiri,
 for the 2nd and 4th Respondents
 A.Gnanathanasan ASG PC with Anusha Samaranayake
 SSC,
 for the 1st, 3rd, 6th and 7th Respondents
 Argued on : 08.07.2011 and 22.08.2011
 Decided on : 24.09.2012

S.Sriskandarajah, J,

The Petitioner was the Mayor of the Kandy Municipal Council and he was suspended from holding the office of the Mayor of Kandy by Gazette Extraordinary No.1640/2003 dated 10th February 2010. The Petitioner challenged the said suspension order by way of a Writ Application in the High Court of Kandy in Application No.1 of 2010 dated 15th March 2010, and the said Application was dismissed by the High Court for not complying with the rules of court in relation to filing of Applications. The Petitioner challenged the said dismissal by way of Revision Application to the Court of Appeal and, when the Court of Appeal Application was pending, the Petitioner was removed from office by the 1st Respondent this decision was notified by Gazette Extraordinary No.1668/2005 dated 23rd August 2010 after an inquiry held by the 5th Respondent. In view of the removal of the Petitioner from the office of the Mayor, he withdrew the Revision Application filed in the Court of Appeal and filed the present Writ Application challenging his removal.

The Petitioner submitted that he had been serving the Kandy Municipal Council from 1996, and during the local authorities election held in 2008, he was appointed as the Mayor of the Kandy Municipal Council, and he was serving in that capacity until he

was suspended on 13th February 2010. During his period of suspension the 4th Respondent was directed to perform the duties of the Petitioner as the Mayor of Kandy Municipal Council. The 5th Respondent was appointed to inquire into the allegations against the Petitioner and report within three months under Section 277(1) of the Municipal Council Ordinance and Section 2(1) of the Supervision of Local Authorities Administration Enactment No.7 of 1990 of the Central Province. The 5th Respondent commenced his inquiry with the participation of the Petitioner and concluded the same on the 9th of May 2010. The 5th Respondent tendered his report to the 1st Respondent and the 1st Respondent decided to remove the Petitioner as Mayor of the Kandy Municipal Council with effect from the date of suspension and that the same had been published in the gazette in the Gazette Extraordinary No.1668/2005 dated 23rd August 2010.

The Petitioner in this Application is seeking a Writ of Certiorari to quash the decision of the 1st Respondent to remove the Petitioner from holding the office of Mayor of Kandy Municipal Council. The Petitioner contended that he being innocent of all purported charges, and his removal from the office of Mayor of Kandy was purportedly based on the report tendered by the 5th Respondent but in fact his removal was purely for political and/or collateral purpose and it is mala fides.

The Petitioner has not challenged the inquiry held by the 5th Respondent, a retired judicial officer. The Petitioner participated at the said inquiry and in the said inquiry, the charges were framed against the Petitioner and the Inquirer, after hearing the parties, based on their evidence had come to the conclusion that the charges were proved against the Petitioner. The said report was forwarded to the 1st Respondent. It is the duty of the 1st Respondent to consider the said report to independently assess the said report, and after personally satisfying the outcome of the finding, he has to act on the said finding, but as there is no material to indicate this position, I have directed the learned Additional Solicitor General who appeared for the 1st Respondent, to produce

the said department file to court to ascertain the said facts. The file was produced in open court by the Legal Officer of the 1st Respondent on the 24th of August 2011. The said file contains the communication between the Chief Minister and the Commissioner of Local Authority dated 8th August 2010, in which communication the Chief Minister has requested the Commissioner of Local Authority to take further steps in relation to this matter, and in the letter he has specifically referred to the fact that he has gone into the said report of the retired Judicial Officer, M. Mahindrarajah, and he was personally satisfied that the allegation levelled against him of the said allegations have been proved and, therefore, he has decided to remove him from the office and directed the relevant authority to take further steps.

The above communication shows that the 1st Respondent has given his mind to the report of the 5th Respondent and has arrived at this conclusion. It has been held in *Ratnasiri Wickremanayake Vs. Ratnasiri Wickremanayake and others in S.C. Appeal No.95/98, S.C. Minutes of 25th February 1997*, the Supreme Court held "On a plain reading of the provision of Section 2 of the statute, the duty of the Minister is to read the report of the retired Judicial Officer and, with the assistance of his findings of fact, proceed to be personally satisfied that there were one or more acts or omissions specified in Section 2(1)(a)-(d) of the statute." The Minister is also statutorily obliged to exercise his own judgment as to whether, in the circumstances of the case, he ought to remove the Mayor. He is not under any legal compulsion to remove the Mayor even if he was satisfied that the Mayor was guilty of one or more of the acts or omissions specified in Section 2(1)(a).

In the present case it could be seen that the 1st Respondent has satisfied himself, after reading the report of the retired Judicial Officer who inquired into the allegations levelled against the Petitioner, the allegation that the 1st Respondent had acted mala fides is not substantiated by any material other than a mere statement that the 1st Respondent has acted with political motivation. The allegation of mala fides have to be

specifically averred and proved. In the above circumstances the Petitioner has not submitted sufficient material for this court to issue a Writ of Certiorari to quash the order of the 1st Respondent and, hence, this court dismisses this application without cost.

President of the Court of Appeal