

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

In the matter of an application for the grants of writs Certiorari, Mandamus, Quo Warranto and Prohibition under terms of Article 140 of the Constitution.

**C.A No 77/2014**

1. Abdul Rahuman Lebbe Uduma Lebbe,  
No. 24,  
Rifaipura, Thambaala,  
Polonnaruwa.
2. Wijeyakoon Mudiyanseelage Susantha  
Priyabandara,  
No. 51, BOP 316,  
Thalpotha,  
Polonnaruwa.
3. AnuraRajamanthri,  
No. 181, BOP 316,  
Thalpotha,  
Polonnaruwa.

**Petitioners**

**-Vs-**

1. The Pradeshiya Sabha Lankapura,  
Lankapura.
2. K.M. Kamalawathie Manike,  
Secretary,  
The Pradeshiya Sabha of Lankapura.
3. W.T.A. Manel,  
The Commissioner of Local Government,  
Department of Local Government  
(North Central Province)  
Provincial Council Complex,  
Dharmapala Mawatha,  
Anuradhapura.
4. Returning Officer,  
The Returning Officer of  
Lankapura Pradeshiya Sabha,  
Lankapura.
5. The Commissioner of Elections,  
The Secretariat of the Commissioner of  
Elections,  
No. 395,

Old Kotte Road,  
Rajagiriya.

6. Ho. SusilPremajayantha, MP

The General Secretary of the United  
People's Freedom Alliance,

No. 301,

T.B. Jaya Mawatha,

Colombo 10.

7. The Secretariat of the Commissioner of  
Local Government (Polonnaruwa)

8. A.A.G.M.S. Alutwatte, Chairman

9. S.A. Bandula Samansiri, Vice Chairman

10. W.P. SarathWijesinghe, Member

11. K. Wijetunga, Member

12. K.M. Sunil Shantha, Member

13. W.G.S. Sarath Ananda, Member

14. W. NishshankaWeerasena, Member

15. Mustapha Nazardheen, Member

16. A.L.A. Latheef, Member

The Pradeshiya Sabha of Lankapura

08<sup>th</sup> to 16<sup>th</sup> Respondents

17. S.M. RanjithSamarakoon,

Chief Minister,

Chief Ministry,

North Central Province.

18. The Hon, Attorney General,

Attorney General's Department,

Colombo 12.

Respondents.

**Before** : **Vijith K. Malalgoda, PC. J. (P/CA) &  
A.H.M.D. Nawaz, J.**

**Counsel** : **Senani Dayaratne for the Petitioners**  
**Upali Jayamanna for the 1<sup>st</sup> and 2<sup>nd</sup>  
Respondents**  
**Harendra Rajapakshe for the 3<sup>rd</sup> and 12<sup>th</sup>  
Respondents**

Kushan de Alwis PC with A.Tennekone  
and Chamath Fernando for 6<sup>th</sup>  
Respondent

Nerin Pulle DSG for 4<sup>th</sup>, 5<sup>th</sup> and 18<sup>th</sup>  
Respondents

Faiszer Mustapha PC with Pulasthi  
Rupasinghe for the 8<sup>th</sup> Respondent

Saman Galappathi for the 9<sup>th</sup>  
Respondent

**Argued & Delivered on : 07.10.2014**

**A.H.M.D.Nawaz J,**

### **ORDER ON INTERIM RELIEF**

This application revolves around the Lankapura Pradeshiya Sabah and the Petitioners aver that they are in the main application seeking to impugn, *inter alia*, the actions/inactions of any one or more of the Respondents, and in particular the 8<sup>th</sup> Respondent Chairman for failing to submit the budget for 2014, for a second time, after the initial presentation of the budget was defeated by one vote in the Lankapura Pradeshiya Sabha and cogent reasons for the defeat of the budget were discussed, and recommendations were submitted by the Members of the

said Pradeshiya Sabha. The Petitioners have also prayed for interim relief at prayers (m) and (n) of the Petition and the prayers are for the following-

- (a) An interim order suspending the **decision** that the 8<sup>th</sup> Respondent is not deemed to have resigned from the post of Chairman
- (b) An interim order, directing the 17<sup>th</sup> Respondent (the Chief Minister of North Central Province) to suspend the 8<sup>th</sup> Respondent from the post of Chairman of the Lankapura Pradeshiya Sabha, *inter alia*, under and in terms of section 185 of the Pradeshiya Sabha Act.

In contra distinction to this claim of the Petitioners, the 8<sup>th</sup> Respondent- the Chairman of the Lankapura Pradeshiya Sabah has filed his limited objections disputing several of the averments contained in the Petition and the Counsel for the 8<sup>th</sup> Respondent, Faiszer Mustapha PC has raised preliminary objections to the grant of interim relief on the premise that these interim reliefs are incapable of being granted as their grant would be quite contrary to the provisions of the the *Pradeshiya Sabha Act* read with the Local Authorities (Special Provisions) Act No. 21 of 2012.

Both in the contentions of the Counsel for the Petitioners Mr. Senany Jayaratne as well as those of Mr. Faiszer Mustapha PC, the Counsel for the 8<sup>th</sup> Respondent, loomed large the application of two very salient provisions namely-the proviso to Section 169 of the *Pradeshiya Sabha Act*

which was introduced as an amendment to the Local Authorities (Special Provisions) Act No. 21 of 2012 and Section 185 of the *Pradeshiya Sabha Act*.

The introduction of the proviso by the Local Authorities (Special Provisions) Act No. 21 of 2012 to Section 169 of the *Pradeshiya Sabha Act* has the following effect.

If the Council (*sic*) modifies or rejects all or any items in any budget or supplementary budget or adds any item thereto and if the Chairman does not agree to such decision of the Council, **he shall resubmit** the said budget to the Council for further consideration.

Where a budget or supplementary budget is not passed by the Council within two weeks after it is resubmitted for the second time, the **Chairman shall be deemed to have resigned** from the office of Chairman at the end of the said period of two weeks.

In terms of the proviso whose seeming effect is referred to above, the condition precedent to the deeming provision coming into operation is the duty to re-submit the said budget when there has been disagreement to the first submission and only if the budget submitted a second time is not passed within two weeks, the Chairman is deemed to have resigned from office.

In fact the main prayer (d) of the Petition invokes the jurisdiction of this Court to quash a **decision** if any that the said Chairman (8<sup>th</sup> Respondent) is not deemed to have resigned from office.

On a comparative perusal of the main relief (d) and the interim relief (m) it is crystal clear that both reliefs are identical to each other. In both these prayers which are not mutually exclusive, a decision to the effect that the chairman is not deemed to have resigned from office is referred to and until this Court examines that decision which would dispose of the substantive rights and competing claims, this Court is of the opinion that it need not prejudge the merits of these claims at this stage by prematurely granting at this stage a relief which may or may not be granted at the end of the hearing upon a proper determination of the main issues. The Court observes that the Petitioners pray for an interim relief which is the same as the final relief.

Adverting to second interim relief at (n) which has been prayed for, the Court observes that the said relief requires this Court to direct the 17<sup>th</sup> Respondent (the Chief Minister of the North Central Province) to suspend the 8<sup>th</sup> Respondent (the Chairman of the Pradeshiya Sabha in terms of Section 185 of the Pradeshiya Sabha Act.

At the hearing into this application for interim relief it has been brought to the notice of Court that a process under Section 185 of the Pradeshiya Sabha Act has been initiated and it is in progress. In the circumstances it would be premature for this Court to give any interim relief on this score and the Court bears in mind that it has to be circumspect in regard to the remit of its powers to intervene in an ongoing statutory process.



In the circumstances the Court is disinclined to grant the interim reliefs sought and the Court grants the Respondents time to file objections before this matter is set down for hearing.

**JUDGE OF THE COURT OF APPEAL**

**Vijith K. Malalgoda, PC. J. (P/CA)**

I agree

**~~PRESIDENT~~ OF THE COURT OF APPEAL**