

0IN THE COURT OF APPEAL
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Shan Wijayalal de Silva
Minister-In-Charge of the subjects of
Finance, Planning, Law and Order, Local
Government, Transport, Water Supply,
Electricity, Indigence
Medicine
Chief Minister's Office
Dakshinapaya
Labuduwa, Akmeemana

1st Respondent-Petitioner

C.A. [PHC] APN 82/14 [REVISION]

PHC GALLE NO.SP/HC/WRIT 03/13

Vs.

Narunna Guruge Methsiri Alexander de Silva
No.184, Kanampitiya Road
Galle

Petitioner-Respondent

2. Saman Darshana Panditakorala
Former Commissioner of Local Government
(Southern Province)
C/o Commissioner of Local Government
6th Floor, District Secretariat
Galle
- 2A.Chandima Muhandiram
Commissioner of Local Government
(Southern Province)
C/o Commissioner of Local Government
6th Floor, District Secretariat
Galle.
3. Dileka Kudachchi
Assistant Commissioner of Local
Government

(Galle). The Office of the Commissioner of
Local Government, Galle

4. Veerananarayana Seneviratne Kelum
Deputy Mayor
Municipal Council of Galle
Galle
5. Mohamed Husein Fauzil Niyas
Former Deputy Mayor
Member of Municipal Council
Municipal Council of Galle
Galle
6. Pusparani Edirisinghe
Municipal Commissioner
Municipal Council of Galle
Galle
7. Maduwage Amarasena Silva
Retired Judicial Officer
C/o Ministry of Local Government
(Southern Province)
No.15, Lower Dikson Road
Galle
8. M.N.Paththinige
Senior Inquiring Officer
The Office of the Commissioner of
Local Government (Southern Province)
No.15, 6th Floor, District Secretariat
Galle
9. H.G.Piyadasa
Senior Inquiring Officer (Contract)
The Office of the Commissioner of
Local Government (Southern Province)
No.15, 6th Floor, District Secretariat
Galle
10. W.N.Rathnasiri
Inquiring Officer
The Office of the Commissioner of
Local Government (Southern Province)
No.15, 6th Floor, District Secretariat
Galle

11. B.K.Anusha Chandani
Inquiring Officer
The Office of the Commissioner of
Local Government (Southern Province)
No.15, 6th Floor, District Secretariat
Galle
12. M.W.Manjula Perera
Inquiring Officer
The Office of the Commissioner of
Local Government (Southern Province)
No.15, 6th Floor, District Secretariat
Galle
13. Municipal Council of Galle
Galle
14. A.D.Susil Premajyantha
The Secretary
United People's Freedom Alliance
No.301, T.B.Jaya Mawatha
Colombo 10
15. B.I.de.Silva
The Returning Officer of the Municipal
Council of Galle
The Office of the Assistant Election
Commissioner, Galle

2nd to 15th Respondent-Respondents

BEFORE : **K.T.CHITRASIRI, J.**
MALINI GUNARATNE, J.

COUNSEL : Faiz Musthapha, P.C. with Ms.Machado
for the 1st Respondent-Petitioner

Faiszer Musthapha,P,C. with P.Rupasinghe and Sarah
Faizal for the Petitioner-Respondent

M.V.M.Ali Sabry, P.C.
for the 2nd & 3rd Respondent- Respondents

Chandimal Mendis with V.Vithanage
for the 4th Respondent-Respondent

Ranga Dayananda
for the 6th & 13th Respondent-Respondents

Ms.W.G.B,M.Weerasinghe
for the 8th & 12th Respondent-Respondents

Janaka de Silva, D.S.G.
for the 15th Respondent-Respondent

ARGUED ON : 17.11.2014 & 01.12.2014

WRITTEN SUBMISSIONS : 23.02.2015 by the 1st Respondent
13.02.2015 by 2A & 2B Respondent-Respondents
16.02.2015 by the 4th Respondent-Respondent
26.02.2015 by the 15th Respondent-Respondent

DECIDED ON : 08. 05. 2015

CHITRASIRI, J.

Petitioner-Respondent (hereinafter referred to as the respondent) namely, Methsiri Alexander de Silva assumed duties as the Mayor of the Municipal Council, Galle on 03.12.2008. Whilst holding the office of the Mayor, he was subjected to an inquiry in which he was charged on 16 counts under and in terms of Section 277 of the Municipal Councils Ordinance. The said inquiry was held by the 7th respondent and in the end of that inquiry, the respondent was found guilty for 12 charges. Upon receiving the decision made by the 7th respondent, the 1st Respondent-Petitioner

(hereinafter referred to as the petitioner) who is the Minister in charge of the subject of Local Government, published an order in the Gazette bearing No.1793/25 dated 19.01.2013 removing the petitioner from the office of the Mayor of Municipal Council, Galle, in terms of Section 277(1) of the Municipal Councils Ordinance.

Being aggrieved by the said decision of the petitioner, the respondent filed a Writ application in the High Court of Galle, seeking to quash the report and the findings of the 7th respondent-respondent and the decision of the petitioner that was published in the said Gazette bearing No.1793/25 removing the respondent from the office of the Mayor. Learned High Court Judge refused to quash the report of the 7th respondent but issued a writ of certiorari quashing the decision referred to in Gazette No/1793/25. Accordingly, the respondent was permitted to resume functioning as the Mayor of the Galle Municipal Council. His findings in this regard are as follows:

“ඉහත හේතූන් මත අදාළ පරීක්ෂණය පැවැත්වීම දෝෂ සහගත නොවන බවට තීරණය කරමි. ඒ අනුව පරීක්ෂණ වාර්තාව සමාලෝචනය කිරීමට අවශ්‍ය නොවන අතර, එකී ආඥාව බල රහිත කරමින් සර්ෂියෝරාරි රීට් ආඥාවක් නිකුත් කිරීමට ඉල්ලා ඇති ඉල්ලීම ප්‍රතික්ෂේප කරනු ලැබේ.”

[Vide at page 240 in the appeal brief]

“ ඉහත වගන්තීන් පරීක්ෂා කිරීමේදී පෙනී යන්නේ අදාළ නගර සභාවේ ධුරයන් ඉවත් කිරීම හෝ නගරාධිපති ධුරයෙන් ඉවත් කිරීම හෝ කළ හැක්කේ අදාළ නගර සභාවේ කාල සීමාව තුළදී පමණක් බවය. ඒ අනුව නගර සභාව විසුරුවා හැරීමෙන් පසුව පත් කරනු ලබන නගර සභාව අලුත් නගර සභාවක් වන අතර, එම නගර සභාවට පත් වන කලින් නගර සභාවේ ධුරය අත්හිටවු

සහිකයෙකුට අලුත් නගර සභාවේ තනතුරු දැරීම අහෝසි කිරීමට අමාත්‍යවරයාට බලතල නොමැත. මේ බව 325 වගන්තියේ විධිවිධාන විමසා බැලීමේදී පැහැදිලි වේ.

325 (5) යම් මහ නගර සභාවක් සඳහා වූ මහ නගර සභාව විසුරුවා හරිනු ලැබීමෙන් පසු ඒ මහ නගරය සඳහා අලුත් මහ නගර සභා සංස්ථාපනය කළ අවස්ථාවක මේ ආඥා පනතින් හෝ ...”

[Vide at page 247 in the appeal brief]

Being aggrieved by the aforesaid decision of the learned High Court Judge, the petitioner filed this revision application seeking to set aside the said order of the learned High Court Judge by which he quashed the decision contained in the aforesaid Gazette 1793/25 removing the respondent from the office of the Mayor. Plain reading of the judgment of the learned High Court Judge, it seems that that he has relied upon Section 325 (5) of the Municipal Council Ordinance when he issued the writ of certiorari quashing the decision found in gazette 1793/25. Said Section 325 of the Municipal Council Ordinance does not consist five sub-sections. It ends with sub-section 3. Moreover, said Section 325 refers to the manner in which the Municipal Councils become successors to specific administrative areas that were under the control of other Local Authorities. As such, I do not see any rational to have relied upon Section 325(5) by the learned High Court Judge when he issued the writ of certiorari quashing the decision of the petitioner. Hence, it is seen that such reasoning of the learned High Court Judge is *ex facie* incorrect.

However, the learned High Court Judge has also considered the matters contained in Section 277 of the Municipal Council Ordinance, when he issued the writ

of certiorari. Admittedly, removal of the Mayor by the petitioner had been under that Section 277(1) (e) (i) of the Municipal Councils Ordinance. Said Section 277 refers to the power of the Minister to dissolve the Council for matters referred to therein and those include incompetency, mismanagement etc. Before removing the Mayor from his office under the aforesaid sub section (1), the petitioner has followed the procedure referred to in the remaining subsections referred to in Section 277 of the Municipal Councils Ordinance. Therefore, it is to be noted that the petitioner has followed the correct procedure before he published the gazette removing the petitioner from the office of the Mayor.

Be that as it may, the issue that was argued before this Court was whether or not the petitioner who is the Minister in charge of the subject was entitled in law to remove the Mayor under Section 277 of the Municipal Council Ordinance when he (the Mayor/respondent) had been re-elected to the same office for another tenure of office, at the time the removal was published in the gazette.

The aforesaid Section 277(1) reads thus:-

“ If at any time the Minister is satisfied that there is sufficient proof of –

- (a) incompetence and mismanagement; or*
- (b) persistent default in the performance of the duties imposed by this Ordinance or any other written law; or*
- (c) persistent refusal or neglect to comply with any provisions of law; or*
- (d) abuse of the powers conferred by this Ordinance or any other written law; or*
- (e) persistent refusal to hold or attend meetings or to vote or to transact business at any time meeting to be held.*

on the part of the Mayor, or on the part of any Municipal Council, or of any of the Councillors thereof the Minister may as the circumstances of each case may require by Order published in the Gazette –

- (i) *remove the Mayor from office; or*
- (ii) *remove all or any of the Councillors of the Council from office and the provisions of section 13(3) shall thereupon apply; or*
- (iii) *dissolve the Municipal Council*

and such Order shall as soon as may be convenient be laid before Parliament”.

Contention of the learned President’s Counsel for the petitioner was that the Minister in charge of the subject is empowered to remove the Mayor if he is found guilty to the charges framed to establish matters referred to in Section 277 of the Municipal Council Ordinance despite the fact that he had been re-elected to the office of the Mayor for a another period subsequent to the period in which the alleged incidents has taken place. He further contended that the fact that the responded continuing to participate at the inquiry held against him while he was holding the office of the Mayor for the second time also would be a reason for the Chief Minister to act in terms of Section 277(1) of the Municipal Councils Ordinance.

On the other hand, learned President’s Counsel for the respondent argued that the removal under Section 277 can be made only during the period that the alleged mismanagement etc. had taken place and those matters would come to an end with the laps of that period in office held by the respondent as the Mayor. Accordingly, he contended that the Minister is not empowered to act under that section when the Mayor is re-elected for a period subsequent to the period during which the alleged incidents had occurred. He also stressed of the importance of the franchise of the people and submitted that it may equate to a subversion of the franchise in the event this application of the petitioner is allowed disregarding his election to the office of the

Mayor for the second time. Accordingly, learned President's Counsel for the respondent moved that the petition be dismissed, affirming the decision of the learned High Court Judge.

As mentioned hereinbefore the issue is whether or not the Minister in charge is empowered to remove the Mayor acting upon Section 277 (1) of the Municipal Council Ordinance when the alleged allegations had been taken place during the previous tenure of office of the Mayor. Section 277 of the Municipal Councils Ordinance does not specifically mention the period applicable, when making a decision under that Section 277(1) of the Municipal Councils Ordinance. Neither has it restricted its applicability for the period in which the alleged incidents have taken place. Then the issue is whether the Minister is empowered to remove the Mayor from his/her office under Section 277(1), during a period subsequent to the period in office in which the allegations that were proved had taken place.

Admittedly, incidents upon which the inquiry had been held had occurred during the first period in office of the respondent. The petitioner was declared elected as the Mayor for the second time at the elections held in the month of October 2011. Inquiry referred to above, held by the 7th respondent-respondent continued even thereafter. Then only the 7th respondent-respondent presented his report dated 27.06.2012 to the petitioner. Consequently, the petitioner by a Gazette notification bearing No.1793/23 dated 19.01.2013 removed the Mayor from his office. (document marked P31). Admittedly, the decision of the inquiring officer who is the 7th

respondent had been pronounced and delivered during the subsequent period in office of the respondent.

However, the fact remains that the respondent has actively participated at the inquiry held against him even after he was re-elected to the office of the Mayor. He had done so without any objection had been raised at the time the inquiry was pending before the 7th respondent who inquired into the allegations made against the Mayor. Had he thought that he is entitled to be in the office due to the re-election, the respondent should have informed that to the inquiring officer at that point of time enabling the inquirer to take appropriate measures accordingly. It is more so since he had been fully aware of the fact that he was subjected to an inquiry in relation to matters alleged to have happened during his first tenure of office when he contested for the elections for the second time.

Also, the respondent should have been aware of the consequences of the inquiry as well, at the time he was elected as the Mayor for the second time. His continuous participation at the inquiry even after assuming duties for the second time makes both parties to think that they were subjected to the procedure referred to in Section 277 under which provision the inquiry had begun. Therefore, the respondent at this late stage cannot claim that he cannot be subjected to a removal under that Section 277 of the Municipal Councils Ordinance. In the circumstances, it is my opinion that the petitioner-respondent cannot claim that the respondent is not entitled to remove him under Section 277 (1) of the Municipal Council Ordinance or rather he is estopped from stating so.

Moreover, all the Counsel who appeared before this Court in this connection without any hesitation highlighted the importance of good governance when it comes to the exercising of public duties and functions cast upon the officials. This phenomenon was endorsed and accepted by the Supreme Court as well and it is evident by the following two decisions. In **Sarath Ekanayake v. Sarath Dharma Siri Bandara and others** (S.C.Appeal No.85/2011, S.C.Minutes dated 10.09.2014) has held as follows:

“I am of the opinion that any interpretation of Section 185 (2) of the Pradeshiya Sabha Act 15 of 1987 on the basis that the time period of three months is mandatory, would defeat the intention of the Legislator who intended to ensure good governance based on a transparent system”.

In the judgment of the **Waters Edge Case (Sugathapala Mendis and others v. Chandrika Bandaranaike Kumaratunge and others)** Tilakawardane, J citing **Bandara v. Premachandra (1994) 1 SLR 301** has held that:

*“the State must in the public interest expect **high standards of efficiency and service** from public officers in their dealings with the administration and the public, in the exercise of constitutional and statutory powers and jurisdiction and the judiciary must endeavour to ensure that this expectation is realized. Tilakawardane J. went on to state that this practice has to be upheld in the name of good governance and economic development of the nation”.*

“Bindra’s Interpretation of Statutes” also highlights the importance of avoiding construction of statutes which would tend to make the statute unjust, oppressive, unreasonable, absurd, mischievous or contrary to public interest. It reads as follows:

“It is a well known principle of interpretation statutes that a construction should be put upon a statutory provision which would lead to maintain absurdity or futility, palpable injustice, or absurd inconvenience or anomaly. To avoid absurdity or incongruity grammatical and ordinary sense of the words can, in certain circumstances, be avoided. There is no obligation on a court of law to construe a clause as would lead to a clear absurdity which would not possibly be regarded as contemplated by the legislating authority or agency. Since the basic and underlying purpose of all legislation, at least in theory, is to promote justice, it would seem that the effect of the statute should be of primary concern. If this is so, the effect of a suggested construction is an important consideration and one which the court should never neglect. As a result, the court should strive avoid a construction which would tend to make the statute unjust, oppressive, unreasonable, absurd, mischievous or contrary to public interest. One should avoid construction which would result in absurdity and give a harmonious construction so as to avoid making one provision of the Act conflict with the other”.

(10th Ed.Pg.275-6)

Hence, it is the duty of this Court to interpret Section 277 of the Municipal Councils Ordinance to ensure public interest. Therefore, it is my view that the removal of the respondent from the office of the Mayor under the aforesaid Section 277 shall be valid even though the matters led to the said removal had been during the period

immediately before the period of his second tenure in office particularly to ensure good governance.

At this stage, it is also pertinent to refer to Section 9(3) of the Local Authorities Elections Ordinance as well, since a clear prohibition is found therein to become a candidate to any Local Authority for the matters such as the removal in this instance, for a period of five years from the date of a removal. The aforesaid provision of law clearly shows that a person who is found guilty for an offence under the Municipal Councils Ordinance is not entitled even to be elected as a Member of the Council. Such a provision is brought into the Statute Book in order to prevent any person who had been removed from the office being elected, basically to maintain good governance.

Therefore, the removal under Section 277 (1) of the Municipal Councils Ordinance also is to be interpreted in the like manner. Therefore, it is not incorrect to state that the re-election for the second time to the office of the Mayor will not prevent the Minister in charge of the subject acting under Section 277 (1) of the Municipal Councils Ordinance since such a provision help maintaining good governance as well.

For the aforesaid reasons, it is my opinion that the learned High Court Judge misdirected himself when he decided to issue a writ of certiorari quashing the decision of the petitioner, removing the respondent from his office.

For the reasons setout hereinbefore, the judgment of the learned High Court Judge that quashed the decision of the petitioner contained in the Gazette bearing No.1793/25 dated 19.01.2013 is set aside. Petitioner's application for writ made in the High Court is dismissed. Accordingly, the order made in the said Gazette notification bearing No.1793/25 dated 19.01.2013 shall prevail. This application is allowed without costs.

Appealed allowed.

JUDGE OF THE COURT OF APPEAL

MALINIE GUNARATNE, J.

I agree

JUDGE OF THE COURT OF APPEAL