

**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 of the Democratic  
Socialist Republic of Sri Lanka for a mandate in  
the nature of Writs of Certiorari, Prohibition  
and Mandamus.**

Sarath Ekanayake,  
Chief Minister of the Central Provincial Council,  
Provincial Council Complex,  
Pallekelle,  
Kundasale.

**Petitioner**

**C.A. (Writ) Application**

**No. 62/2015**

**Vs,**

1. Tikiri Kobbekaduwa,  
Former Governor of the Central Province,  
Governor's Office,  
Kandy.
2. Anuradha Jayaratne,
3. T.B. Tennakoon,
4. M.M.V. Weerawardena,
5. A.M.Mahinda Abeykoon,
6. R.G. Samaranayaka,
7. Nissanka Herath,
8. Gunathilaka Rajapakse,
9. A.G. Sirisena,
10. R.Linton Wijesinghe,
11. A. Sunil Kithsiri,
12. Alluthgamage Weerasinghe,
13. A.A.M. Manel Bandara,
14. M.G.Jayaratne,
15. Asoka Jagath Wijenayake,
16. Gamini Wijayabandara,

17. T.M.B.P.Tennakone,
18. S.B. Bandula Yalegama,
19. Parakrama Dissanayake,
20. W.M.Yasamanna,
21. L.D.Nimalasiri,
22. E.M.W. Buddika Ekanayaka,
23. A.H.M.Thilak Bandara,
24. Ramasamy Muththaiya,
25. R.K.Kanagaraj,
26. R.A.Philip Kumara,
27. M. Rameshwaram,
28. M.Udayakumar,
29. M.P.Shakthiveil,
30. R.M.S.B.K.Rathnayaka,
31. S.Somasundaram,
32. S.Ponnaiyah,
33. S.K.Dissanayaka,
34. S.Saraswathie,
35. Nimal O. Piyatissa,
36. T.B.Jayatissa,
37. A.S.M.Zanoon,
38. J.Jeilabdeen,
39. M.Y.Dissanayake,
40. H.M.L.K. Jayawardena,
41. A.S.M.Pathmalal.
42. Harindra Chanaka Ileperuma,
43. M.Velu Kumar,
44. W.T.M. Punchibanda Warawewa,
45. A.C. Srimathi Manthilaka,
46. Ranjith Aluvihare,
47. Sanjeewa B. Kaviratne,
48. E.M.Rohana Bandaranayaka,
49. K.K.Piyadasa,
50. D.M.J.B.Dissanayaka,

51. D.M.Renuka M.Herath,
52. R.S.Sathasivam,
53. C.H.Galappaththige,
54. Asanga Thilakaratne,
55. A.Thureisamy Madiyugaraja,
56. A.M.Sivagnanam,
57. E.Rajaram,
  
58. A.L.M.Uwais,  
Allo c/o Central Provincial Council,  
Provincial Council Complex,  
Pallekelle,  
Kundasale.
  
59. United People's Freedom Alliance,  
301, T.B.Jayah Mw,  
Colombo 10.
  
60. Susil Premajyantha,  
General Secretary,  
United People's Freedom Alliance,  
301, T.B.Jayah Mw,  
Colombo 10.
  
61. United National Party,  
Sirikotha,  
Sri Jayewardenepura,  
Kotte.
  
62. Kabir Hashim,  
General Secretary,  
United National Party,  
Sirikotha,  
Sri Jayewardenepura,  
Kotte.
  
63. Democratic Party,  
789/1A, Kotte Road,  
Sri Jayewardenepura,  
Kotte.

64. Ananda Manawadu,  
General Secretary,  
Democratic Party,  
789/1A, Kotte Road,  
Sri Jayewardenepura, Kotte.
65. Ceylon Workers' Congress,  
72, Ananda Kumaraswamy Mw,  
Colombo 7.
66. Arumugam\_Thondaman  
General Secretary,  
Ceylon Workers' Congress,  
72, Ananda Kumaraswamy Mw,  
Colombo 7.
67. UpCountry People,s Front,  
279, Frai Hill Bazar,  
Hatton.
68. A. Lawrence,  
General Secretary,  
UpCountry People,s Front,  
279, Frai Hill Bazar,  
Hatton.
69. Sri Lanka Muslim Congress,  
Vauxhall Street,  
Colombo 02.
70. Hasan Ali,  
General Secretary,  
Sri Lanka Muslim Congress,  
Vauxhall Street,  
Colombo 02.
71. Surangani Ellawala,  
Governor of the Central Province,  
Governor's Office,  
Kandy.

## **Respondents**

**Before : Vijith K. Malalgoda PC J (P/CA) &  
H.C.J. Madawala J**

**Counsel : Manohara de. Silva P.C for the Petitioner**

**Wasantha Wijewardena with Shamali Arachchige for 3<sup>rd</sup>  
Respondent,**

**Indika Demuni de Silva DSG with M.Jayasinghe SC  
for 1<sup>st</sup> Respondent,**

**Ronald Perera P.C, C. Mendis and Suren Fernando for the  
46<sup>th</sup>, 49<sup>th</sup>, 51<sup>st</sup> Respondents,**

**Suren Fernando for the 61<sup>st</sup> Respondent.**

**Supported On : 20.03.2015**

**Written Submission On : 02.04.2015**

**Order On : 11.05.2015**

## **Order**

**Vijith K. Malalgoda PC J**

Petitioner has filed the present application before this court praying that this court be pleased to;

- b) Grant a mandate in the nature of a Writ of Certiorari to quash the decision of the 1<sup>st</sup> respondent to request the Petitioner to prove whether he has the support of the majority of the members of the Central Provincial Council as contained in letter dated 15.01.2015 marked P8;
- c) Grant a mandate in the nature of a Writ of Prohibition prohibiting the 71<sup>st</sup> Respondent and/ or the Governor of the Central Province from removing the Petitioner from the post of Chief Minister of the Central Provincial Council;
- d) Grant a mandate in the nature of a Writ of Prohibition prohibiting the 71<sup>st</sup> Respondent and/ or the Governor of the Central Province from appointing the 3<sup>rd</sup> Respondent and/ or any other person other than the Petitioner as the Chief Minister of the Central Provincial Council;

- e) In the event a decision is made by the 71<sup>st</sup> Respondent Governor of the Central Province to appoint the 3<sup>rd</sup> Respondent or any other person other than the Petitioner as the Chief Minister of the Central Provincial Council, grant a mandate in the nature of a Writ of Certiorari to quash such decision of the 71<sup>st</sup> Respondent Governor of the Central Province to appoint the 3<sup>rd</sup> Respondent or any other person other than the Petitioner as the Chief Minister of the Central Provincial Council;
- f) In the event 71<sup>st</sup> Respondent and/ or the Governor of the Central Province appoints the 3<sup>rd</sup> Respondent or any other person other than the Petitioner as the Chief Minister of the Central Provincial Council, grant a mandate in the nature of a Writ of Mandamus directing the 1<sup>st</sup> Respondent and/ or the Governor of the Central Province to act according to law in appointing the Chief Minister of the Central Provincial Council;
- g) Grant interim order restraining the 71<sup>st</sup> Respondent Governor of the Central Province from removing the Petitioner from the post of Chief Minister of the Central Provincial Council until the final determination of this application;
- h) Grant interim order restraining the 71<sup>st</sup> Respondent the Governor of the Central Province from appointing the 3<sup>rd</sup> Respondent and/or any other person other than the Petitioner as the Chief Minister of the Central Provincial Council until the final determination of this application;

When this matter was taken up for support before us, Respondent's appearing through their counsel raised several preliminary objections challenging the maintainability of this application.

However at that stage the court decided to take up both matter, i.e. preliminary objections on the maintainability of the application and whether the petitioner is entitled under Law to ask for notices and interim relief as prayed by him in the petition. Out of the several preliminary objections raised by the Respondents, following two objections could be considered as the main objections.

- a). Whether the petitioner can maintain the present application since the relief prayed for cannot be granted by this court for the reason
  - i). non maintainability of prayer (b) for a Writ of Certiorari
  - ii). Misconceived nature of prayers (c), (d), (e) and (f)
- b). Whether the petitioner can maintain the present application since he has failed to comply with Rule 3(1) (a) of the Court of Appeal (Appellate Procedure) Rules.

In addition to the above preliminary objections, Respondents have also objected any relief being granted to the petitioner by way of issuing notice in the first instance and /or grant interim relief on the following grants.

a). Whether the Petitioner is entitled under Law to ask for the relief he has prayed for since 1<sup>st</sup> and/or 71<sup>st</sup> Respondent is entitled under Law to ascertain whether there is a breakdown of the administration in the province, in order to advise the President to act in terms of Article 154 L.

b). Whether the petitioner is entitled under law to ask for the relief he has prayed for specifically in averments (d) (e) and (f) in the circumstances where he is no longer considered as the "leader of the political party and the question of who decides the leadership under the circumstances set out in the proviso to Article 154 F (4).

According to the petition, the petitioner has contested the Provincial Council Election in 2014 for the Central Province from the United People's Freedom Alliance (UPFA) and was elected as a member representing UPFA securing 70.000 preferential votes.

The Central Provincial Council consists of 58 members, out of whom 36 members were elected from UPFA and 22 members from other Political Parties. Appointment of Chief Minister to a Provincial Council is vested with the Provincial Governor under Article 154 F (4) of the Constitution and the said Article reads as follows;

Art. 154 F (4) The Governor shall appoint as Chief Minister the member of the Provincial Council  
 Constituted for that Province, who in his opinion, is best able to command the support  
 of a majority of the members of that Council:  
 Provided that where more than one half of the members elected to a Provincial  
 Council are members of one political party, the Governor shall appoint the leader of  
 that political party in the Council as the Chief Minister.

According to the petitioner, he was the leader of the UPFA group of the Central Province, and by P-5 he was appointed as the Chief Minister of the Central Province by the 1<sup>st</sup> Respondent.

Since then the petitioner was functioning as the Chief Minister- Central Province, and on 15.01.2015 he has received a letter from the 1<sup>st</sup> Respondent which is produced marked- P8

According to P-8 the 1<sup>st</sup> Respondent has informed the Petitioner that he has received affidavit from 34 members of the Central Provincial Council stating that they do not support the petitioner as the Chief Minister and requesting the appointment of the 3<sup>rd</sup> Respondent as the Chief Minister, and therefore requested the petitioner to prove whether he has the support of the majority of the members of the Council.

Prior to the receipt of the above letter the petitioner by his letter dated 14.01.2015 which is produced marked P-7 placed before the 1<sup>st</sup> Respondent the legal position with regard to the appointment of the Chief Minister by the Governor.

Petitioner by letter dated 17.01.2015 which is produced marked P-9 re- iterated his position and thereafter come before this court seeking relief as prayed in his petition.

Petitioner before support of this application, by motion dated 9<sup>th</sup> March 2015 submitted this court the Original Document of P-3, P-4, P-5, P-6, P-7, P-8, P-9 and a Certified Copy of P-2.

Rule 3 (1) (a) of the Court of Appeal (Appellate Procedure) Rule 1990 reads as follows;

“Every application made to the Court of appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 and 141 of the constitution shall be by way of petition, together with an affidavit in support of the averments there in, and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the court to furnish such document later. Where a petitioner fails to comply with the provisions of this rule the court may, ex mero motu or at the instance of any party dismiss such application.

Since the Petitioner has complied with the above rule prior to support his application, I proceed to overrule the objections raised by the Respondent under Rule 3 (1) (a) of the Court of Appeal (Appellate Procedure) Rules 1990.

The main preliminary objections raised by the Respondents were based on the ground, where the relief prayed for by the Petitioner cannot be granted for either non maintainability of the prayer or misconceived nature of the prayer.

In support of this position respondents have filed detailed written submissions, before this Court. In the written submission the respondents have gone in detail to each of the prayer, and discussed at length whether this court could grant the relief as prayed in each of the prayer.

However this court is of the view that it is too early for this court to look into each of the prayer at this stage and decide whether, a writ will lie in each situation, since that should be the duty of court at the final hearing. However this court is of the view that we should look in to the objections raised on prayer (g) and (h) only, since they refer to interim relief against the 71<sup>st</sup> Respondent.

Whilst objecting to the relief being granted as prayed in the above paragraphs, respondents submitted that the petitioner has failed to demonstrate the imminent presence of an Ultra Vires Decision. As evident by P-8 the 1<sup>st</sup> Respondent requested the petitioner to prove whether he has the support of the majority of the members of the council. When referred to Proviso to Article 154F (4) we observe that there is no necessity for the 1<sup>st</sup> Respondent to make such request, and therefore this court is of the view that by producing P-8 the petitioner has demonstrated before this court that the 1<sup>st</sup> Respondent has commenced to exercise a power he does not have and will proceed to make some more orders in future.

Under these circumstances we decide to reject the above preliminary objections raised by the Respondent.

Whilst objecting to the notices being issued in the present application. Respondents raised an objection to wit that 1<sup>st</sup> and/ or 71<sup>st</sup> respondents are entitled under law to ascertain whether there is a



breakdown of the administration in the province in order to advise the President to act in terms of Article 154 L.

Article 154 L of the constitution refers to a situation where, the President may by proclamation make certain orders on receipt of a report from the Governor of the Province or otherwise, is satisfied that a situation has arisen in which the administration of the Province cannot be carried on in accordance with the Provisions of the Constitution.

However we see no reason to uphold the above objections in the absence of any reference to that effect in P-8 and in the absence of any such material before this court to hold that, a situation has arisen in which the administration of the province cannot be carried out, in accordance with the provisions of the Constitution.

It was further argued before us, that what was mainly decided in the case of Premachandra and Dodangoda Vs Jayawickrama Perera and Bakeer Makar [1993] 2 Sri LR 294 was with regard to the scope of the main sub article to section 154 F (4) and the Court of Appeal as well as the Supreme Court [(1994) 2Sri LR90] failed to consider the proviso in the context of “who is the leader of such party” and therefore require an interpretation of the said article before issuing notices in this matter.

This court sees no merit in the said Argument for two reasons. Firstly P-8 does not refer to quarry as to, who is the leader of the political party which has got majority seats in the Central Provincial Council, a requirement under the Proviso to the main sub article.

Therefore the question of who is the Leader or who is going to decide the Leader is not a matter to be decided by this court.

Secondly this court is of the view that this court in exercising its discretion will refer matters to the Supreme Court for interpretation and there can't be a pre-requisite that the court should first obtain the interpretation.

Under these circumstance this court is of the view that the petitioner has satisfied, that the 1<sup>st</sup> and/or 71<sup>st</sup> Respondent has commence to exercise a power he does not have and will proceed to make some more orders in future. Therefore we decided to issue notices on all respondents and interim order “restraining the 71<sup>st</sup> Respondent Governor of the Central Province from removing the Petitioner from the post of Chief Minister of the Central Provincial Council until the final determination of this application” prayed for in paragraph (g) of the prayer to the petition.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. Madawala**

I agree,

**JUDGE OF THE CUORT OF APPEAL**