

**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.**

Prasanna Ranathunga,  
No. 180/A, Minuwangoda Road,  
Udugampola.

**Petitioner**

**CA (Writ) Application No. 68/2015**

**Vs,**

1. K.C. Logeswaran,  
Governor of the Western Province,  
Governor's Office,  
No. 98/4, Havelock Road,  
Colombo 5.
2. Hirunika Premachandra,
3. Udaya Gammanpila,
4. Upali Kodikara,
5. Roger Seneviratne,
6. Malsha Kumarathunga,
7. R.M.D. Goluhewage,
8. Salochana Gamage,
9. Gamini Thilakasiri,
- 10.A.M.P. Jayatissa,
- 11.A.D. Jagath kumara Sumithra,

12.Hector Bethmage,  
13.Janaka Weliwatte,  
14.E.A.I.D.P.Perera,  
15.U.P.S.K. Rupasinghe,  
16.G.N. Shrivanasinghe,  
17.D.H.G.Sunil Gamini,  
18.A.P.K. Sinhara Silva,  
19.K.T.V.Perera,

20.Nimal Lansa Warnakulasuriya,  
21.Sahan Pradeep Withana,  
22.Samanmali Sakalasuriya,  
23.A.K. Sisira Jayakodi,  
24.A.I.Sunil Wijeratne,  
25.K.H.G. Heeraluge,  
26.Perera Komitige Meril,  
27.Ananda Ranjith Rupasinghe,  
28.R.P.U.M.Rajapakse,  
29.Susara Dinal Silva,

30.G.J.N.Liyanage,  
31.B.P.Lakshman Gunawardana,  
32.Lalith Wanigaratne,  
33.A.H. de Silva Kadupiti,  
34.Athukoralage Nirosha,  
35.Chandana Jayakodi,  
36.M.P.Lional Jayakodi,  
37.Upali Gunaratne,  
38.M.S. Siriwardana,  
39.A.A.Upul Rajitha,

40.R.P.P. Wijesekaea,  
41.A.D.N.D.Jayawardane,  
42.Amith Welgama,  
43.A.P. Rohana Priyankara,  
44.Koralage Yasapala,  
45.A.J.T.Perera,  
46.R.S.K. Withange,  
47.Priyal Nishantha de Silva,

48.Nimal Chandraratne,  
49.A.M.S. Mendis,

50.E.L.Lalith,  
51.W.L. Warnakula,  
52.W.W.N.S. Lal Fernando,  
53.O.W.P.Sanjeewa,  
54.Keerthi Kariyawasam,  
55.F.M.Nousar,  
56.H.D.Lalantha Gunasekara,  
57.Manju Sri Arangala,  
58.S.M. Marrikkar,  
59.M.M..Rahuman,

60.A.N.Padukke,  
61.P.D.L.Leonard Karunaratne,  
62.M.S.M.Fairooz,  
63.Shrinath Perera,  
64.Jayantha de Silva,  
65.U.L.S.Damayantha de Silva,  
66.Anuradha Wimalaratne,  
67.Rodney R. Frezer,  
68.Udara R. Rathnayake,  
69.Harshana Rajakaruna,

70.S.D.K.H. Jayawartdena,  
71.Edaward G.D. Liyanage,  
72.Calistus P. Perera,  
73.Jerad I.Shirantha,  
74.J.A.R.Vijitha Fernando,  
75.R.M.Rose Fernando,  
76.M.S.S. Mahendra Perera,  
77.Udena S. Wijeratne,  
78.D.W.P.de Silva,  
79.Jagath P.P. Withana,  
80.M.J.M.M. Ifthikar,  
81.Pathirage don Abayaratne,  
82.H.V. Priyantha Silva,  
83.K.Chandra Kithsiri,

- 84.G.N.Premashantha Perera,  
85.K.D.Lal Kantha,  
86.Lakshman Nipuna Arachchi,  
87.Sunil Watagala,  
88.Mahindawansa Jayasinghe,  
89.Asoka Sapumal Ranwala,  
90.A.N.Vajiramal Jayatissa,
- 91.S.K.Kidelpitiya,  
92.R.Nimal Peiris,  
93.Pradeep Udawela,  
94.A.D.R.R. Hapuarachchige,  
95.Anurudda Lekamge,  
96.Ashoka Dayaratne,  
97.Indika M.B.P.K. Bandarage,  
98.Ravi Yassas Kumanayake,  
99.Anura P.Katuwawalage,
100. M.Ganeshan,  
101. S.Kuhawaradan,  
102. M.A.Nizamudeen,  
103. Mohamad Rafi Rahim,
104. Abdul J.M.Faaiz,  
All c/o,  
Western Provincial Council,  
Sravasthi Mandiraya,  
32, Sri Marcus Fernando Mw,  
Colombo 7.
105. United People's Freedom  
Alliance,  
301, T.B.Jayah Mw,  
Colombo 10.
106. Susil Premajyantha,  
General Secretary,  
United People's Freedom  
Alliance,  
301, T.B.Jayah Mw,Colombo 10.

107. United National Party,  
Sirikotha,  
Sri Jayewardenepura,  
Kotte.
108. Kabir Hashim,  
General Secretary,  
United National Party,  
Sirikotha,  
Sri Jayewardenepura,  
Kotte.
109. Democratic Party,  
789/1A, Kotte Road,  
Sri Jayewardenepura,  
Kotte.
110. Ananda Manawadu,  
General Secretary,  
Democratic Party,  
789/1A, Kotte Road,  
Sri Jayewardenepura,  
Kotte.
111. People's Liberation Front,  
464/20, Pannipitiya Road,  
Pelawatte, Battaramulla.
112. Tilvin Silva,  
General Secretary,  
People's Liberation Front,  
464/20, Pannipitiya Road,  
Pelawatte, Battaramulla.
113. Democratic People's Front,  
No. 72, Bangasala Street,  
Colombo 11,

114. Mano Ganeshan,  
General Secretary,  
Democratic People's Front,  
No. 72, Bangasala Street,  
Colombo 11,
115. Sri Lanka Muslim Congress,  
Vauxhall Street,  
Colombo 02.
116. Hasan Ali,  
General Secretary,  
Sri Lanka Muslim Congress,  
Vauxhall Street,  
Colombo 02.
117. Ahila Illengai Mahajana  
Congress,  
556, Galle Road,  
Colombo 03.
118. Y.L.S.Hameed,  
556, Galle Road,  
Colombo 03.

**Respondents**

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

**Counsel : Manohara de Silva PC with Pubudini Wickramaratne for  
the Petitioner Indika Demuni de Silva for the 1<sup>st</sup> Respondent  
Wasantha Wijewardane for the 3<sup>rd</sup> Respondent**

**Ronald Perera PC with Chandimal Mendis, Nalin Amarajeewa, Suren Fernando and Akila Amunugama for the 57<sup>th</sup> and 58<sup>th</sup> Respondents,**

**Kushan de Alwis PC with K. Navaratne and C. Fernando for the 105<sup>th</sup> and 106<sup>th</sup> Respondents**

**Suren Fernando for the 107<sup>th</sup> Respondent,**

**Chandimal Mendis for the 108<sup>th</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 Prohibition prohibiting the 1<sup>st</sup> Respondent from removing the Petitioner from the post of Chief Minister of the Western Provincial Council;
- c) Grant a mandate in the nature of a Writ of Prohibition prohibiting the 1<sup>st</sup> Respondent from appointing the 57<sup>th</sup> Respondent and/ or any other person other than the Petitioner as the Chief Minister of the Western Provincial Council;
- d) In the event a decision is made by the 1<sup>st</sup> Respondent to appoint the 57<sup>th</sup> Respondent or any other person other than the Petitioner as the Chief Minister of the Western Provincial Council, grant a mandate in the nature of a Writ of Certiorari to quash such decision of the 1<sup>st</sup> Respondent to appoint the 57<sup>th</sup> Respondent or any other person other than the Petitioner as the Chief Minister of the Western Provincial Council;
- e) In the event the 1<sup>st</sup> Respondent to appoint the 57<sup>th</sup> Respondent or any other person other than the Petitioner as the Chief Minister of the Western Provincial Council, grant a mandate in

the nature of a Writ of Mandamus directing the 1<sup>st</sup> Respondent to act according to law in appointing the Chief Minister of the Western Provincial Council;

f) Grant interim order restraining the 1<sup>st</sup> Respondent from removing the Petitioner from the post of Chief Minister of the Western Provincial Council until the final determination of this application;

g) Grant interim order restraining the 1<sup>st</sup> Respondent from appointing the 57<sup>th</sup> Respondent and/ or any other person other than the Petitioner as the Chief Minister of the Western Provincial Council until the final determination of this application;

When the matter was taken up before us for support, respondents 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 matters, 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, together.

Petitioner contested the Western Provincial Council from the United Peoples Freedom Alliance (UPFA) in the Provincial Councils Election 2014 and was elected as a member representing UPFA obtaining 250,000 preferential votes which is the highest number of preferential votes obtained by a candidate in the Gampaha District.

The Western Provincial Council consists of 104 members out of whom 56 members were elected from UPFA and 48 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 which provides 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 Western Provincial Council and by Government Gazette No. 1859/66 dated 25<sup>th</sup> April 2014 (P-5) previous Governor of the Western Provincial Council announced the appointment of the petitioner as the Chief Minister of the Western Provincial Council.

Since then petitioner was functioning as the Chief Minister Western Province and continued to be the Leader of the UPFA Group of the Western Provincial Council which is confirmed by document P-4.

Petitioner submits that, after the conclusion of the Presidential Elections held on 08.01.2015 the 57<sup>th</sup> Respondent who is the Opposition Leader of the Western Provincial Council has taken steps to obtain affidavits from other members of the Western Provincial Council purporting to grant their support to the 57<sup>th</sup> Respondent and thereafter to have himself appointed by the former Governor of the Western Provincial Council as Chief Minister on the basis that the 57<sup>th</sup> Respondent commands the support of a majority of the members of the Western Provincial Council.

Petitioner has produced marked P-8 a news item published in Lakkima News Paper on 15.01.2015 in support of the above position. However according to the petitioner, the then Governor Western Province has resigned and the 1<sup>st</sup> Respondent was appointed the Governor Western Province on 21.01.2015.

Petitioner has failed to submit before this court any step taken by the 1<sup>st</sup> Respondent and /or by his predisior in furtherance of the said request by the 57<sup>th</sup> Respondent, instead the petitioner has submitted, that he made inquiries and became aware that the then Governor of the Western Province was contemplating to appoint the 57<sup>th</sup> Respondent on the basis that he commanded the support of the majority of the members of the said council. Consequent upon the resignation of the then Governor of the Western Province and the appointment of 1<sup>st</sup> Respondent as his successor in office, the 57<sup>th</sup> Respondent has re-agitated this matter with the 1<sup>st</sup> Respondent and urged him to take steps to remove the petitioner from the office of Chief Minister of the Western Province.

From the aforesaid it is manifestly clear that the Petitioner has relied on hearsay material to arrive at surmises and conjectures in respect of the appointment of Chief Minister to the Western Provincial Council.

In the present application the petitioner has prayed for the grant of a mandate in the nature of Prohibition

- a) Prohibiting the 1<sup>st</sup> Respondent from removing the Petitioner from the post of Chief Minister of the Western Provincial Council and
- b) Prohibiting the 1<sup>st</sup> Respondent from appointing the 57<sup>th</sup> Respondent and /or any other person other than the petitioner as the Chief Minister of the Western Provincial Council

As discussed by HWR Wade and C F Forsyth in administrative Law ( 10<sup>th</sup> Edition at page 512) “quashing and prohibiting orders frequently go hand in hand , as where a quashing order is sought to quash the decision and a prohibiting order to restrained its execution. But either remedy may be sought by itself. Where only a prohibiting order for to prevent the enforcement of an ultra vires decision, as happened in the last cited case, the effect is the same as if a quashing order had been granted to quash it; for the court necessarily declares its invalidity before prohibiting its enforcement. A prohibiting order is a remedy strictly concerned with excess of jurisdiction.

In the present case petitioner has failed to establish any step taken by the 1<sup>st</sup> Respondent and /or by his predecessor in excess of Jurisdiction and /or failed to satisfy this court that the 1<sup>st</sup> Respondent is contemplating to remove the petitioner or appoint any other person in his place.

The 1<sup>st</sup> Respondent by motion dated 6<sup>th</sup> April 2015 has tendered before this court a letter issued by the secretary to the Western Provincial Council dated 19.02.2015 confirming that no request had been made by any party to the 1<sup>st</sup> Respondent or his predecessor to remove the Chief Minister. The above document clearly indicated that no decision has been made by the 1<sup>st</sup> Respondent and/or to appoint the 57<sup>th</sup> Respondent or any other person in his place and therefore it is clear that the petitioner’s case is based purely on speculation and irrelevant hear say material.

Therefore this court is of the view that the petitioner has failed to place before court sufficient material, supporting the relief sought in the prayer to the petition. The Petitioners application is dismissed. No cost is ordered.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. Madawala,**

I agree,

**JUDGE OF THE CUORT OF APPEAL**