

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

In the matter of an application for mandate
in the nature of a writ of Certiorari turms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Athula Paranayapa Service (Pvt) Ltd.
A P S Building,
High Level Road, Boralugoda
Kosgama.

PETITIONER

C.A. (Writ) Application No.456/08

Vs

1. Anuradhapura Municipal Council
New Town,
Anuradhapura.
2. Dr. H.L.K. Caldera
The Mayor
Anuradhapura Municipal Council
New Town
Anuradhapura.
3. Mr. I.M. Senanayake
Municipal Commissioner
Anuradhapura Municipal Council
New Town
Anuradhapura.

RESPONDENTS

BEFORE

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

COUNSEL

: Ikram Mohamed P.C. with

Padman Bandara and

Nadeeka Galhena for the
Petitioner.

W. Dharmasiri Karunaratne
for the Respondents.

ARGUED ON

: 20th January, 2016

DECIDED ON

: 08th March, 2016

Deepali Wijesundera J.

The petitioner has filed this application against the respondents praying for a writ of Certiorari to quash a decision taken by the Municipal Council of Anuradhapura to increase the charges for advertising hoardings from January 2008 indicated in **X23 and X25**.

The petitioner's counsel submitted that the first respondent had decided to increase its charges from Rs. 50/= per square foot to Rs. 200/= which is 400%, which the petitioner stated is arbitrary, unreasonable unjust and ultra vires.

The learned counsel submitted that the Municipal Council is entitled to pass by-laws in terms of *Section 272 (6) (d) of the Municipal Council Ordinance*, and such by-laws become valid only in terms of *Sec. 268*. Under *Section 268* the by-laws have to be approved by the Minister and confirmed by Parliament and notification of such confirmation has to be published in the Gazette. The petitioner stated that the said by-law published in the said Gazette No. 1572 dated 17/10/2008 does not lawfully entitle the first respondent to charge or increase the fees for the hoardings since the said Gazette has been published long after the letters marked **X23 and X25** had been sent. He further stated that the said Gazette notification is not a publication in terms of *Sec. 268* of the said ordinance, since it does not fulfill the requirements of *Sec. 268 (1) and (2)*.

Citing the judgment in **Chandrasiri vs University of Ruhuna 2006 1 SLR 156** the petitioner submitted that a Municipal Council is not entitle in law to act arbitrarily or unreasonably or in an unjust matter in the exercise of the powers or discretion vested in them.

The petitioner mentioning the judgments in **Kathiresan vs Sirimevan Bibile 1992 1 SLR 275** and **Wickremasinghe and another vs The Urban Development Authority 2003 3 SLR 253** stated that

where the discretion is vested in an authority it should be exercised reasonably and that the elements of reasonableness is discussed in by Lord Green which is referred to as "Wednesbury's unreasonableness" in the Wednesbury case.

The learned counsel for the respondents submitted that under Sec. 267 of the Municipal Council Ordinance every Municipal Council may make by laws following the stipulated procedure which is laid down in the Local Authorities (standard by-laws) Act No. 6 of 1952 and under Sec. 2 of the said Act the Minister of Local Government made standard by-laws and published in the government Gazette. He further stated that under this Act each Municipal Council need not go to Parliament or get approval from the Minister individually to make by-laws, and that the standard by-laws could be adopted by each Municipal Council as their own by-laws following the procedure laid down in the Act. The respondents further submitted that under the said Act No. 6 of 1952 the Minister has made the by-laws and published them in the Gazette No. 541/7 dated 20.01.1989 marked **A1** thereafter each Municipal Council had to adopt the said by-laws by passing a resolution in their council meeting and publish that in the government Gazette and thereby adopted those by-laws as their own. He cited the judgment in SC (F/R) Application 252/2007 which referred to adopting of by-laws by Municipal Council.

The counsel for the respondents submitted that the petitioners has not looked into this aspect of the law and only confined himself to a few sections of the Municipal Council Ordinance disregarding the correct procedure and law relating to the adoption of by-laws and has confused himself.

The respondents further stated that the reasonability or fairness is a relative concept and has to be looked at in accordance with the given situation and it depends on the circumstances of each case. The respondents stated that in 1980 the charges were increased to Rs. 15/= per square foot and to Rs. 50/= per square foot in 1995 after 15 years which was three times at that time. Now after thirteen years in 2008 they have increased from Rs. 50/= to Rs. 200/= in view of the cost of living and other expenses with regard to maintaining of the sacred city. The respondents stated that the Municipal Council of Nuwara Eliya charged Rs. 250/= to Rs. 500/= per square foot and Thamankaduwa Pradeshiya Sabha Rs. 250/= per square foot and that they have followed the same procedure to increase the fees.

The respondents citing the judgment in **Nirmala De Silva vs Seneviratne and others 1982 (2) SLR 569** stated that under the circumstances of this case gazetting the decision to increase the

charges in the year 2008 was quite correct and within the settled law and that a few months delay in gazetting does not matter.

This court has to decide whether the respondents had the authority to take a decision to increase the advertising charges and if so was it reasonable and whether the decision is legal.

In the case of SC (F/R) Application 252/2007 it was stated.

“As stated earlier it was not disputed that a displaying of advertisements within the Colombo Municipality area was regulated by the by-laws which came into operation in 1949 and the by-laws Gazetted in the government Gazette notification bearing No. 541/17 dated 20/01/1989 and adopted by the Colombo Municipal Council”.

The Anuradhapura Municipal Council has duly adopted the by-laws Gazetted in No. 541/17 of 20/01/1989 at their council meeting held on 15/10/2006 and published in the Gazette No. 1477 dated 22/12/2006 by which the whole legal process was completed and the by-laws in

541/17 become the by-laws of Anuradhapura Municipal Council therefore the Anuradhapura Municipal Council could legally increase the charges for advertisements in its areas as per the Gazette marked A. The petitioner has failed to look into this aspect of the law and only confined himself to a few sections of the Municipal Council Ordinance and disregarded the procedure and the law relating to the adoption of the by-laws.

On the argument of reasonability of the increased charges, compared to the other Municipal Council areas as stated by the respondents one cannot say Rs. 200/= is unreasonable. Anuradhapura Municipal Council has to maintain the sacred city by maintaining the roads, sanitary facilities and drainage system and also provide services to the pilgrims as well as the tourists. The petitioner under these circumstances can not say the increase was unreasonable.

For the afore stated reasons I decide to refuse the application of the petitioner with costs fixed at Rs. 100,000/=.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree

JUDGE OF THE COURT OF APPEAL