

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

In the matter of an application for
Writ of Prohibition .

B. Nandasulochana Perera,
No.32/2, Abeysinghapura,
Periyamulla,
Negombo.

Petitioner

VS.

**CA (PHC) 56/ 2014
Colombo H.C. No. 72/2012**

1. D.D. Upul Shantha de Alwis,
Commissioner of Co-operative
Development and Registrar of Co-
operative Societies,
P.O.Box 444,
Duke Street,
Colombo 01.
2. Negombo Multipurpose Co-
operative Society Limited,
No.358, Main Street,
Negombo.

Respondents.

NOW BETWEEN

B. Nandasulochana Perera,
No.32/2, Abeysinghapura,
Periyamulla,
Negombo.

Petitioner – Appellant

VS.

1. D.D. Upul Shantha de Alwis,
Commissioner of Co-operative
Development and Registrar of Co-
operative Societies,
P.O.Box 444,
Duke Street,
Colombo 01.
2. Negombo Multipurpose Co-
operative Society Limited,
No.358, Main Street,
Negombo.

Respondent - Respondents.

BEFORE: : **W.M.M. Malinie Gunaratne, J. and
P.R. Walgama, J.**

COUNSEL : Mahanama de Silva with K.N.M. Dilrukshi
for the Appellant

Chaya Sri Nanmuni, S.S.C.
for the 1st Respondent

K. Patabendige
for the 2nd Respondent.

Argued on : 01.10.2015

Written submissions
filed on : 06.11.2015 and 23.11.2015

Decided on : 28.03.2016

Malinie Gunaratne, J.

The Petitioner – Appellant (hereinafter referred to as the Appellant) filed an Application bearing No. HCWA/07/2012 dated 08.06.2012 in the High Court of Galle, seeking a Writ of Prohibition prohibiting the 1st Respondent from declaring that the election of the Petitioner to the Committee of the Periyamulla Pradeshikaya of the 2nd Respondent Society on 19.11.2011, is invalid.

After considering the submissions made by both parties the learned High Court Judge dismissed the Appellant's Application. Being aggrieved by the said Judgment the Appellant has appealed to this Court against the decision of the learned High Court Judge, praying for annulling the said Judgment.

When this Appeal was taken up for argument on 01.10.2015, Counsel for both parties made submissions in support of their respective case and with the permission of the Court, subsequently tendered written submissions as well.

The facts of this Appeal as submitted by the Appellant *albeit* brief, are as follows:

The Appellant is a member of the 2nd Respondent – Respondent (hereinafter referred to as the 2nd Respondent) Co-operative Society. On 24.08.2002, he obtained a loan of Rupees Two hundred thousand (Rs.200,000/-) for which he mortgaged his property. He has stated in the Petition that due to financial problems, instalments could not be paid regularly. By letter of demand dated 20.12.2004, the 2nd Respondent Society required the Appellant to pay the outstanding sum of Rupees One hundred and seventy eight thousand two hundred and ninety (Rs.178,290/-) before 10.01.2005. Since the Appellant failed to comply with the said demand, the matter was referred for Arbitration and an award was obtained against the Appellant for the payment of the said sum of Rupees One hundred and seventy eight thousand two hundred and ninety (Rs.178,290/-). Thereafter the Appellant paid the aforesaid sum and got the Mortgage Bond released.

On 05/01/2008, the Appellant was elected as a Committee Member of the Periyamulla Pradeshikaya of the 2nd Respondent Society. While serving as a member, on 02.04.2008, he was informed that he had defaulted in the repayment of the loan and was disqualified to be elected as a Committee Member.

By letter dated 23.05.2012, the 1st Respondent-Respondent (hereinafter referred to as the 1st Respondent) required the Appellant to show cause, why a decision should not be taken under Section 60(02) of the Statute No.3 of 1998 of the Western Provincial Council Co-operative Society. The Appellant, by letter dated 05.06.2012, informed the 1st Respondent that he had settled the loan. It is averred by the Appellant in the circumstances that he is entitled to invoke the Writ jurisdiction of the Court to obtain a Writ of Prohibition against the 1st Respondent, from declaring

that the election of the Appellant to the Committee of the Periyamulla Pradeshikaya of the 2nd Respondent Society on 19.11.2001 is invalid.

In contesting the above suit by the 1st and 2nd Respondents by way of objections had stated the following:

As per Rule No.21 (e) of the Regulations of Co-operative Societies and Article 22(i) (c) of the Registered Co-operative Societies Constitution, any person who had defaulted the re-payment of a loan obtained from a Co-operative Society for more than three months (03 months) continuously, such person is disqualified to be elected as a Committee member of a Co-operative Society. Therefore, the Appellant is not qualified to be elected to the said Co-operative Society as a Committee Member.

When this appeal was taken up for argument on 01.10.2015, the Counsel for the Appellant contended, that the main issue that has to be decided is the interpretation of Rule 21 (i) (e) of the Co-operative Rules 1973.

Rule 21 (i) (e) reads as follows:

21 (i) A member of a registered society shall be disqualified from being elected, as a member of the Committee of Management or of a regional or a branch Committee;

(e) If he is, in respect of any loan received by him, in default, to the Society or to any other Registered Society or to a liquidator, for a period exceeding three months or is in default in any other respect to that society or to any other Society or to any liquidator.

It is the stance of the learned Counsel for the Appellant that, the three months period specified in Rule 21 (i) (e) is the period immediately preceding the date of election. The Counsel contended that, the Appellant has repaid the loan on 10.11.2006 and he was elected as a Committee Member on 05.01.2008. Hence it is about thirteen months after the repayment of the loan that the Petitioner was elected. The learned Counsel argued that, therefore the default disqualification is not applicable for life as interpreted by the Respondents.

He draws the attention of this Court to Rule 21 (i) (d) of the Co-operative Rules 1973.

Rule 21 (i) (d) reads as follows:

“if within the three years immediately preceding he has either been convicted of any offence involving moral turpitude or has been sentenced to a term of imprisonment of three months or more.”

It is the contention of the learned Counsel that, even a person convicted for a criminal offence is disqualified from being elected only for a period of three years. Hence, it is the stance of the Counsel that it is unjustifiable and unreasonable, a person who has defaulted payments; but subsequently makes a repayment gets disqualified for life.

In the instant case the learned High Court Judge has held that the Appellant who had defaulted in re-payment of a loan for a period exceeding three months (03 months) is disqualified from being elected although the loan had been re-paid as at the date of the election.

It is the stance of the learned Counsel for the Appellant that the learned High Court Judge had completely misdirected herself in relation to the interpretation of the above Rule 21 (i) (e) of the Co-operative Rules of 1973. Therefore, it is the contention of the Counsel that Rule 21 (i) (e) of the Co-operative Rules has to be given a logical interpretation by this Court.

However, it is the stance of the learned Counsel for the Respondents that, Section 21 (i) (e) is not ambiguous and therefore it should not be open for interpretation. The learned State Counsel has contended that, the period of three months is clearly a reference to a delay of instalments or the period within which such money should be paid as stipulated and not a reference to a period of three months preceding election.

Drawing the attention of the Court to the Local Authorities Election Ordinance and the Provision 21 (i) (d) of the Co-operative Rules of 1973, further the learned State Counsel has contended that the words “**preceding**” has been clearly included in these Provisions, but it is not included in the Provision 21 (i) (e) of the Co-operative Rule.

In terms of the Local Authorities Election Ordinance a person “who is serving or has during the period of five years immediately **preceding** completed the serving of the whole or part of sentence of imprisonment” is qualified to be elected to a local body.

In terms of Rule 21 (i) (d) of the Co-operative Rules of 1973, the conviction for a criminal offence disqualifying a member to be elected should be within three years immediately **preceding** the date of the election.

Hence, this Court had taken pains to consider whether there was any obscurity and/or ambiguity in the wording of Rule 21 (i) (e).

Since the word “**preceding**” has not been included in 21 (i) (e) of the Co-operative Rules of 1973, I am of the view, it was not the intention to refer to the **preceding** three months and but a reference to three months after the money was due. Hence, there is no obscurity or ambiguity in the wording of Rule 21 (i) (e) of the Rules.

Therefore, this Court has to give effect to the plain meaning of the Rule. In doing so, this Court is of the view, that there is no ambiguity and it is the literal interpretation in the wording of Rule 21 (i) (e), although it seems to be unfair.

It is relevant to note, the Appellant has admitted :

- (i) That he has defaulted the loan;
- (ii) that he has not even complied with the letter of demand;
- (iii) the matter had been referred for arbitration and the Order was given on 07.11.2005;
- (iv) he has only paid the outstanding on 10.11.2006.

Accordingly, the Appellant has admitted that, there was a clear delay of more than three years. It is the contention of the learned State Counsel, in the light of this and the clear provision of Rule 21 (i) (e), the 1st Respondent had no option but to decide that the Appellant’s election is invalid as per the regulations. The learned State Counsel has further contended that if there is patent disqualification the Commissioner is empowered under Section 60 (2)

of the Co-operative Societies Law, No. 5 of 1972 to decide whether such election is void or not. It is the stance of the learned State Counsel that, the fact that the loan was re-paid does not detract from the disqualification since there is no such provision to state that re-payment will qualify a person.

The Writ of Prohibition is used to prevent the exercise of jurisdiction over a particular matter or dispute. It is to be noted that, the 1st Respondent has acted within his power vested in him and he has not exceeded the ambit of his authority. Therefore, no Writ of Certiorari will lie and accordingly no Writ of Prohibition can be issued as well.

Halsbury, Volume II pages 85 and 86, Simonds Edition in “The grant of a Writ is as a general rule, a matter of discretion of the Court. It is not an order granted as of right and it is not issued as a matter of course. Accordingly, the Court may refuse the order, not only upon the merits but also by reason of the special circumstances of the case. (Halsbury’s Laws of England).

On perusal of the judgment, it is apparent, that the learned High Court judge has taken into consideration the submissions and documents filed by parties and had come to her conclusion. As such, I do not see any wrong in the manner in which the learned High Court Judge has considered the facts and the way in which she has applied the law in this instance.

For the above reasons, I see no basis to interfere in the Judgment of the learned High Court Judge. Accordingly, I affirm the Judgment of the learned High Court Judge dated 25.04.2014 and dismiss the Appeal with costs.

Since the judgment in this case binds the connected Case No. CA (PHC) APN 72/2014, the Registrar is directed to file a copy of this judgment to the said Case.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed with costs.