

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

**In the matter of an Application for a mandate in the  
nature of *Writ of Certiorari* under article 140 of the  
Constitution of the Democratic Socialist Republic of  
Sri Lanka**

Sinhalage Jagath Samarawickrama,  
The Chairman,  
Pradeshiya Sabha of Dimbulagala,  
Dimbulagala.

**PETITIONER**

**C.A. Writ 168/2015**

**Vs,**

1. Hon. Peshala Jayaratne,  
Chief Minister and Minister in Charge of the subject of  
Local Government,  
Office of the Chief Ministry,  
Provincial Council of the North Central Province  
Anuradhapura
2. Mr. K.K. Sunil Gamini Perera,  
Retired High Court Judge,  
No. 74/11,  
Jaya Road, Udahamulla,  
Nugegoda.

3. W.P.A. Manel,  
Commissioner of Local Government of the North  
Central Province,  
Office of the Commissioner of Local Government,  
Anuradhapura.
4. Dimbulagala Pradeshiya Sabha,  
Dimbulagala.
5. B.S.Podimenike,  
The Secretary,  
Dimbulagala Pradeshiya Sabha,  
Dimbulagala.

## **RESPONDENTS**

**BEFROE:- Vijith K. Malalgoda PC J (P/CA)**

**COUNSEL:- Mahanama de. Silva with K.N.M. Dilrukshi, Udaya Athapattu**

**and Shalika Ishani for the Petitioner**

**Harindra Rajapaksha for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents**

**Ranjan Mendis for the 4<sup>th</sup> and 5<sup>th</sup> Respondents**

**Supported on: 13.11.2015**

**Written submission: 12.01.2016**

**Ordered on: 15.07.2016**

## **Order**

### **Vijith K. Malalgoda PC J**

Petitioner to the present application was the former chairman of the Dimbulagala Pradeshiya Sabha. He has come before this court seeking a writ of Certiorari to quash an order made by the 1<sup>st</sup> Respondent under section 185 (1) of the Pradeshiya Sabha Act No. 15 of 1987 removing the said Petitioner from the post of chairman and membership of Dimbulagala Pradeshiya Sabha.

In addition to the 1<sup>st</sup> Respondent who is the Chief Minister and Minister in Charge of the Subject of Local Government of the North Central Province, the Petitioner had made as the 2<sup>nd</sup> Respondent the inquiry officer appointed by the 1<sup>st</sup> Respondent under section 185 of the said Act.

The commissioner of Local Government North Central Province, Dimbulagala Pradeshiya Sabha and the Secretary to the Dimbulagala Pradeshiya Sabha had been made as the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents.

In addition to the above Respondents the Petitioner had made Deputy Chairman and the other member of the Dimbulagala Pradeshiya Sabha as 6<sup>th</sup> to 16<sup>th</sup> Respondents to the application.

However prior to this application was supported before this court, the said Pradeshiya Sabha was dissolved and thereafter the petitioner had moved court to amend the Caption and support the application. The above application was made in open court on 27.05.2015 when this matter comes up for support before this court. Petitioner had filed an amended petition before this court on 26.06.2015 and in the said amended petition only the 1<sup>st</sup> to 5<sup>th</sup> Respondents were added as parties.

When the amended petition was supported before this court on 13.11.2015, the counsel representing the 1<sup>st</sup> to 5<sup>th</sup> Respondents have raised a preliminary objection on the basis that necessary parties to the application (i.e. 6<sup>th</sup>-16<sup>th</sup> Respondents to the original petition) are not before the court and moved that the application be dismissed in limine.

When the said preliminary objection was raised before this court, parties moved to file written submissions with regard to the said preliminary objection and the matter went down for written submissions. However prior to the

dead line to file the written submissions, the Petitioner by motion dated 18.11.2015 moved this court to withdraw the amended caption he has filed on 26.06.2015.

However the said motion was disallowed by this court and the parties have now filed written submissions on the preliminary objection raised by the 1<sup>st</sup> to 5<sup>th</sup> Respondents.

As observed by this court the main matter has not yet been supported before this court and therefore this court is not interested in going through the merits of this case at this stage. Whilst raising the preliminary objection before this court, the 1<sup>st</sup> to 3<sup>rd</sup> and 4<sup>th</sup> to 5<sup>th</sup> Respondents have gone through the facts of this matter to show that the former members of the Pradeshiya Sabha are necessary parties to the application. Since the petitioner has not supported the matter before this court, it is premature for this court to take a decision whether the petitioner has failed to make necessary parties, as Respondents to the amended petition or not.

Therefore this court is not inclined to allow the preliminary objection and dismiss this application in limine at this moment but decides to consider the said preliminary objection along with the main case when considering the issuance of notices on the Respondents.

Court decides to fix the main matter for support for notices, subject to considering the above preliminary objection at that stage.

**PRESIDENT OF THE COURT OF APPEAL**