

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

In the matter of an application for a writ  
of prohibition under Article 154P of the  
Constitution to be read along with the High  
Court of the Provinces (Special Provisions)  
Act No. 19 of 1990.

**CA (PHC) 94/2012**

**HC Anuradhapura case No- HCRA/11/2012**

Anil Rathnayake,  
No. 110, Thammannawa, Thalawa

**Plaintiff**

Vs.

01. Berty Premalal Dissanayake,  
Chief Minister of the North Central  
Province,  
North Central Province, Anuradhapura.
02. K. H. Nandasena,  
Minister of Agriculture and Fisheries,  
North Central province, Anuradhapura.
03. Appuhamige Herath Banda Semasinghe,  
Minister of Food, Co-operatives and rural  
Development,  
North Central province, Anuradhapura.
04. S.M. Peshala Jayaratne,  
Minister of Social, Welfare, Sports and  
Youth Affairs,  
North Central province, Anuradhapura.

05. R.M. Punchi Banda Ratnayake,  
Minister of Highways and power,  
North Central province, Anuradhapura.
06. Herath Mudiyanseelage Karunaratne  
Divulgane,  
Governor of the North Central Province,  
North Central Province Governor's Office,  
Anuradhapura.
07. A.M.W.A. Amunugama,  
Secretary of the North Central Province,  
North Central Provincial Council,  
Anuradhapura.

**Respondents**

And now Between

Anil Rathnayake  
No. 110, Thammannawa, Thalawa.

**Plaintiff-Petitioner**

Vs.

01. Berty Premalal Dissanayake,  
Chief Minister of the North Central  
Province,  
North Central province, Anuradhapura.
02. K. H. Nandasena,  
Minister of Agriculture and Fisheries,  
North Central province, Anuradhapura.
03. Appuhamige Herath Banda Semasinghe,  
Minister of Food, Co-operatives and rural  
Development,  
North Central province, Anuradhapura.

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Minister of Social, Welfare, Sports and  
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North Central province, Anuradhapura.
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North Central province, Anuradhapura.
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Divulgane,  
Governor of the North Central Province,  
North Central Province Governor's Office,  
Anuradhapura.
07. A.M.W.A. Amunugama,  
Secretary of the North Central Province,  
North Central Provincial Council,  
Anuradhapura.

**Respondents-Respondents**

**Before : H.C.J. Madawala , J  
&  
L.T.B. Dehideniya, J**

**Counsel : Petitioner is absent and unrepresented.  
SASA S.Thiranagama for the Respondent- Respondent**

**Written Submissions on : 16 /03 /2017**

**Decided On : 26 /05 /2017**

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

The Petitioner-Appellant has filed this appeal to set aside the order dated 6/6/2012 of the Learned Civil Appellate High Court Judge of Anuradhapura on or about on 8/5/2012. The Learned Civil Appellate High Court Judge had issued an ex-parte interim order in terms of paragraph (iii) of the prayer of the petition dated 3/5/2012 until the final hearing and determination of this application and whereas the 1<sup>st</sup> to 5<sup>th</sup> Respondents move to raise the following preliminary objections as regards to the jurisdiction of this court to hear and determine this application and the maintainability of this application, and vacation of the interim order and the dismissal of this application on same.

It was the position of the 5<sup>th</sup> and 6<sup>th</sup> Respondents-Respondents that in view of the provisions of Article 154P (4) (b) of the Constitution this court has no jurisdiction to hear and determine this application in as much as the powers of the 1<sup>st</sup> and 6<sup>th</sup> Respondents to dissolve the North Central Provincial Council emanate from Article 154B (8)(c) and (d) of the Constitution and not from any law or any statute made by the Provincial Council, in respect of any matter set out in the Provincial Council list and therefore the Petitioner's application is liable to be dismissed in limine.

The Petitioner has invoked the jurisdiction of “The Civil Appellate High Court of the North Central Province” , which has no jurisdiction to issue orders in the nature of writs of prohibition or Certiorari, Procedendo, Mandamus and Quo Warranto and therefore the Petitioner’s application is liable to be dismissed in limine.

The member of the North Central Provincial Council elected to same at the election held on 23/08/2008, other than the 1<sup>st</sup> to 5<sup>th</sup> Respondents who are affected by the reliefs prayed for by the Petitioner and therefore are necessary parties to this application and therefore the Petitioner’s applications liable to be dismissed in limine.

When this matter came up for hearing on 6/2/2017 the Petitioner was absent and unrepresented. The Respondent was represented by counsel. The Respondent’s Counsel agreed to dispose this case by way of written submissions and accordingly written submissions had been tendered to court on 16/2/2017, Judgment was due on 4/5/2017 and was postponed to 26/5/2017.

On a perusal of the written submissions tendered to court, we find that the Respondents has taken up several preliminary objections regarding the maintainability of this action. They are as follows;

- (1) In view of the provisions of Article 154P (4) (b) of the Constitution, the Civil Appellate High Court does not have the jurisdiction to hear and determine this application since the power to dissolve the Provincial Council given to the 1<sup>st</sup> and 6<sup>th</sup> Respondents emanate from Article 154 B (8) (c) and (d) of the Constitution and not from 'any law or statute' of the Provincial Council as set out in the Provincial Council list;
- (2) The Petitioner has invoked the jurisdiction of the 'Civil Appellate High Court of the North Central Province', which does not have any jurisdiction to issue writs ; and
- (3) The other members of the North Central Province, other than the 1<sup>st</sup> to 5<sup>th</sup> Respondents, who were elected on 23.8.2008 have not been named as Respondents.

In addition to the preliminary objections the Respondents filed objections stating that the petition sought to curtail the powers vested in the 1<sup>st</sup> and 6<sup>th</sup> Respondents by the Constitution and the Civil Appellate High Court does not have the jurisdiction to grant such relief, and further that when the substantial relief cannot be granted, interim relief too cannot be granted.

The Learned Civil Appellate High Court Judge also quoted the provisions of article 154F (2) which states that the discretion exercised by the Governor shall not be questioned by any court, if there is a question whether the Governor was empowered to exercise such discretion or not. Therefore, in the circumstances of this case, it is clear by a mere perusal of the Article 154B (8) that the 1<sup>st</sup> and the 6<sup>th</sup> Respondent have the power to dissolve the Provincial Council and therefore, a writ of prohibition cannot be issued as correctly held by the Learned Judge of the High Court.

**In Maithripala Senananyake Vs. J.D. Mahindasoma 1998(2) SLR 333** that the Governor, upon the advice of the Chief Minister, can dissolve the Provincial Council in accordance with article 154B (8) (d). The Civil Appellate High Court of the Provinces cannot issue writs in the exercise of power by a person outside the province. Article 154P stipulates that the High Court of the Provinces can issue writs against any person exercising power within the province under any law or any statute made by any Provincial Council.

The power to dissolve the Provincial Council has been given by Article 154B (8) (b) and (d). It was submitted that these are powers not confined to the Province but are enshrined in the Constitution itself and therefore, this matter cannot be canvassed in the High Court of the Province. It was

further submitted that the High Court of the Provinces cannot issue writs in matters that do not fall within the Provincial Council list as has been held in the cases of **Weregama Vs. Eksath Lanka Plantation Workers Union 1994 (1) SLR 293** and **Nimalaratne Vs. Commissioner of Agrarian Services 2000 (3) SLR 184**.

Accordingly it was submitted that the prayer of the Petitioner could not in any event be granted. The elections were held and the meeting of the council was held on 18/9/2008 as per the provisions of Article 154E, the Provincial Council unless dissolved sooner, shall continue for 5 years. Even if the North Central Provincial Council was not dissolved prior to the completion of the term, the term would have come to an end on 17/09/2013. The Respondents also have changed and are no longer holding office. Therefore, it was contended that this matter is futile.

In the case of **P.S. Bus Company Vs. Ceylon Transport Board 61 NLR 491** it was held that a writ will not issue if it is futile.

The Petitioner's other grounds of appeal was that the Civil Appellate High Court holding that the 1<sup>st</sup> Respondent is not a Public Officer is an error of law. The Respondents respectfully submit that what is stated in the order is that a prohibition will generally issue to prevent a Public Officer



from taking a wrong decision but that in this present application, the advice given by the Chief Minister to the Governor to dissolve the Provincial Council cannot be interpreted as a wrong decision of a 'Public Officer'.

It was submitted that there is no legal basis for the Learned Judge of the Civil Appellate High Court to have stated that the Petitioner is not entitled to a writ since there is no statute passed within the Province. It is clear from the order that this is not what has been stated and that article 154P states that writs can be issued if only the power is exercised within the province.

It was submitted that the Learned Civil Appellate High Court Judge has decided on these matters and has not given the Petitioner a chance to object to the decisions. The Respondents submits that issues were argued at length and ample opportunity given to present the case. It was submitted that the Learned Civil Appellate High Court has correctly analyzed the law and the order does not have to be confirmed to the submissions made wherein the law concerned.

It was submitted that since Article 154B (8) (b) and (d) bestowed the power on the 1<sup>st</sup> and 6<sup>th</sup> Respondents to dissolve the Provincial Council the petition must fail. The powers emanate from the Constitution and not from the Provincial Council List and therefore Article 154P precludes writs

being issued by the High Court of the Province. Finally it was submitted there since the matter was futile and Respondents no longer holding office and further, the terms of the Provincial Council would in any event have come to an end on 17/9/2013. That the Petition of the Petitioner be dismissed and the order of the Learned Judge of the Civil Appellate High Court dated 6/6/2012 be upheld.

Thirteenth Amendment of the Constitution Article 154B (8) (c) and (d) is as follows;

**154B (8) (c)** *“The Governor may dissolve the Provincial Council*

*(d) The Governor shall exercise his powers under this paragraph in accordance with the advice of the Chief Minister, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council.”*

Thirteenth Amendment of the Constitution Article 154F (2) is as follows;

**154F (2)** *“ If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done*

*by the Governor shall not be called in question in any court on the ground that he ought or ought not have acted on his discretion. The exercise of the Governor's discretion shall be on the President's directions."*

Thirteenth Amendment of the Constitution Article 154B (8) is as follows;

**154B (8)**

- (a) "The Governor may, from time to time, summon the Provincial Council to meet at such time and place as he thinks fit, but two months shall not intervene between the last sitting in one session and the date appointed for the first sitting in the next session.
- (b) The Governor may, from time to time, prorogue the Provincial Council.
- (c) The Governor may dissolve the Provincial Council
- (d) The Governor shall exercise his powers under this paragraph in accordance with the advice of the Chief Minister, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council."

Thirteenth Amendment of the Constitution Article 154P (4) (b) is as follows;

**154P (4) (b)** order in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province any power under-

- (i) any law; or
- (ii) any statutes made by the Provincial Council established for that Province,

On consideration of the above said preliminary objections and submissions before court we are of the view that according to the provisions of Article 154P (4) (b) of the Constitution that the Civil Appellate High court has no jurisdiction to hear and determine this application and thus this Petitioner's application is liable to be dismissed in limine.

The member of the North Central Provincial Council elected to same at the election held on 23/08/2008, other than the 1<sup>st</sup> to 5<sup>th</sup> Respondents who are affected by the reliefs prayed for by the Petitioner and therefore we are of the view that they are necessary parties to this application and therefore we are of the view that the Petitioner's applications should be dismissed in limine.

The Learned Civil Appellate High Court Judge stated that the provisions of Article 154F (2) which states that the discretion exercised by the Governor shall not be questioned by any court, if there is a question whether the Governor was empowered to exercise such discretion or not. Hence a mere perusal of the Article 154B (8) that the 1<sup>st</sup> and the 6<sup>th</sup> Respondent have the power to dissolve the Provincial Council and therefore, a writ of prohibition cannot be issued as correctly held by the Learned Judge of the Civil Appellate High Court. Further the Civil Appellate High Court of the provinces cannot issue writs in matters that do not fall within the Provincial Council list. When the contended matter is futile a writ will not issue. It is also stated that in the order it is stated that a prohibition will generally issue to prevent a Public Officer from taking a wrong decision. However in the present application, the advice given by the Chief Minister to the Governor to dissolve the Provincial Council cannot be interpreted as a wrong decision of a 'Public Officer'.

The Petitioner is not entitled to a writ since there is no statute within the Province. Writs can be issued if only the power is exercised within the province. It was contended that the Learned Civil Appellate High Court Judge has decided on these matters and has not given the Petitioner a chance to object to the decisions. We are of the view that issues has been argued at length and ample opportunity has been given in the present case.

Article 154B (8) (b) and (d) empowered the 1<sup>st</sup> and 6<sup>th</sup> Respondents to dissolve the Provincial Council, therefore we are of the view the petition must fail. We are of the view the matter is futile and the term of the Provincial Council would in any event have come to an end on 17/9/2013 and that this case is futile.

Hence the petition of the Petitioner is dismissed and the order of the Learned Civil Appellate High Court Judge dated 6/6/2012 be upheld.

Accordingly we dismiss this appeal with costs of Rs.10,000/-.

**Judge of the Court of Appeal**

**L.T.B.Dehideniya, J**

**I agree.**

**Judge of the Court of Appeal**