

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

La Fortresse (Pvt) Limited,
Level 27,
East Tower,
WTC, Echelon Square,
Colombo 1.
Petitioner

CASE NO: CA/WRIT/415/2016

Vs.

1. Habaraduwa Pradeshiya Sabha,
Habaraduwa.
2. S.D.C. Dissanayake,
The Secretary,
Habaraduwa Pradeshiya Sabha,
Habaraduwa.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Faisz Musthapa, P.C., with Mehran Careem for the
Petitioner.

Chandana Wijesuriya for the Respondents.

Decided on: 10.12.2018

Samayawardhena, J.

The petitioner company filed this application against the 1st respondent-Habaraduwa Pradeshiya Sabha and the 2nd respondent-its Secretary seeking (a) to quash by certiorari the resolution passed by the Finance and Policy Committee of the 1st respondent as evidenced by the Gazette marked P36 and (b) to compel the respondents by mandamus to issue the trade licence to the petitioner for the year 2016 to operate their hotel.

By the said resolution, the Pradeshiya Shabha was empowered to levy a trade licence fee for the year 2016 at the rate of 1% of its takings of the previous year from a hotel registered with the Sri Lanka Tourist Board. The petitioner's hotel is one such hotel.

The learned President's Counsel for the petitioner contends that the said resolution is *ultra vires* on two grounds:

- (a) In terms of section 147(1) read with sections 149 and 12(1) of the Pradeshiya Sabha Act, No.15 of 1987, as amended, only the Pradeshiya Sabha is empowered to impose trade licence fees, and the Finance and Policy Committee of the Pradeshiya Sabha has no authority to do so.
- (b) In any event, the said Finance and Policy Committee of the Pradeshiya Sabha has not been properly constituted as mandated by section 12(1) of the Act.

The composition of the relevant Finance and Policy Committee, as seen from R3, has not been decided by the respondents, but by the Commissioner of the Local Government (Southern Province). The 2nd respondent has merely carried out that order.

However, the Commissioner of the Local Government (Southern Province) has not been made a party to this application.

In the same breath, if the contention of the petitioner is that the decision of the Finance and Policy Committee is *ultra vires*, the members of the said Committee shall be made parties to this application. This has not been done.

In *Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero* [2011] 2 Sri LR 258 at 267 the Supreme Court held that:

The first rule regarding the necessary parties to an application for a writ of certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made a respondent to the application. If it is a body of persons whose decision or exercise of power is sought to be quashed each of the persons constituting such body who took part in taking the impugned decision or the exercise of power should be made respondent. The failure to make him or them respondents to the application is fatal and provides in itself a ground for the dismissal of the application in limine.

If the act sought to be impugned had been done by one party on a direction given by another party who has power granted by law to give such direction, the party who had given the direction is also a necessary party and the failure to make such party a respondent is fatal to the validity of the application.

Hence, in my view, the application of the petitioner is liable to be dismissed *in limine* on the failure to make necessary parties as respondents to this application.

Without prejudice to the above, let me now consider the merits of the application.

It is common ground that by the time the said resolution was adopted the Pradeshiya Shabha ceased to exist by operation of law as the term of the Pradeshiya Shabha had expired. In such circumstances, what happens to the day to day affairs of the Pradeshiya Sabha? Section 9(3) of the Act provides the answer. The short answer is that the 2nd respondent-Secretary to the Pradeshiya Sabha shall take over. Section 9(3) reads as follows:

Where a Pradeshiya Sabha is unable to discharge its functions by reason of the Chairman and Vice-Chairman ceasing to hold office, the Secretary shall, during any period that elapses between the occurrence of the vacancies in respect of those offices and the filling of those vacancies in accordance with the provisions of the Local Authorities Elections Ordinance, have, exercise, perform and discharge all the rights, privileges, powers, duties and functions vested in or conferred or imposed on, the Pradeshiya Sabha, the Chairman or Vice-Chairman by this Act or by any other written law.

Then it is clear that the 2nd respondent Secretary had the authority to decide trade licence fees.

The learned President's Counsel for the petitioner drawing attention of Court to section 12(1) of the Act, which *inter alia* says that the Pradeshiya Sabha cannot delegate its powers to

raise any loan, to levy any rate or to impose any tax to the Committees, submits that the decision taken by the Finance and Policy Committee to impose trade licence fees is therefore *ultra vires*.

The learned counsel for the respondents drawing attention to documents marked R4A, R4B, R5 submits that the Committee made only a recommendation but the ultimate decision was taken by the 2nd respondent Secretary. The learned counsel further submits that there was no delegation of power to the Committee to impose trade licence fees.

Be that as it may, the petitioner concedes that the Pradeshiya Sabha has the authority to decide trade licence fees. As the Pradeshiya Sabha was non-existent by operation of law, it is now clear that the Secretary could take that decision. If the Secretary took that decision alone, there could not have been any objection.

According to the second proviso to section 149 of the Act, a Pradeshiya Sabha is empowered to levy a trade licence fee from a hotel registered with the Sri Lanka Tourist Board at the rate of 1% of its takings of the previous year. Therefore, the impugned decision is not an arbitrary one but mere implementation of the said provision of the Act.

The argument of the petitioner is that the decision was taken not by the Secretary, but by the Committee. Who comprised of that Committee? As per R3 and the second page of R5, it was comprised of six members, of which the 2nd respondent Secretary was the head or at least a member. Then it is clear that the 2nd respondent Secretary has taken the decision along

with five others. It is my considered view that the fact that five others also took the same decision does not make the decision of the 2nd respondent Secretary invalid. The decision of the 2nd respondent is not *ultra vires*.

It is a prerequisite to pay the trade licence fee to issue the trade licence. Hence this Court cannot compel the respondents by mandamus to issue the trade licence without such payment being made and other requirements if any being satisfied.

I dismiss the application of the petitioner with costs.

Judge of the Court of Appeal