

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

1. Dr. (Mrs.) Anna Kariyawasam,  
No.4,  
Park Lane,  
Off Park Road,  
Colombo 5.  
And 23 Others  
Petitioners

**CASE NO: CA/WRIT/132/2014**

Vs.

- 1B. Rosy Senanayake,  
The Mayor of Colombo,  
Colombo Municipal Council,  
Town Hall,  
Colombo 7.  
And 12 Others  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Shantha Jayawardena for the Petitioner.  
Manohara Jayasinghe, S.C., for the 5<sup>th</sup> and 12<sup>th</sup>  
Respondents.  
Ranil Samarasooriya for the other Respondents.

Decided on: 01.02.2019

Samayawardhena, J.

This application of the petitioners concerns the calculation of extra remuneration to be paid to the petitioners from the income generated through private sample testing at the laboratories of the Colombo Municipal Council.

The petitioners have sought the following reliefs in the prayer to the petition.

- (c) To issue a writ of certiorari to quash the decision of the 12<sup>th</sup> respondent marked P29
- (d) To issue a writ of certiorari to quash the decision of the 2<sup>nd</sup> and/or 3<sup>rd</sup> and/or 6<sup>th</sup> respondents marked P30
- (e) To issue a writ of certiorari to quash the part of the Resolution marked P28 whereby it has been resolved “*to calculate the allowances to be calculated at 35% from the 75% profit earned from the investigations*”
- (f) To issue writ of mandamus compelling the 1<sup>st</sup>-6<sup>th</sup> respondents to make the payments to the petitioners “*for testing of private samples*” in terms of the Resolution marked P8 and the amended Resolution marked P14

Whilst the case was pending, the 12<sup>th</sup> respondent by letter dated 08.12.2014 has withdrawn the decision marked P29. A copy of this letter has been tendered to Court (with a copy to the Attorney-at-Law of the petitioner) by way of a motion of the Attorney-at-Law of the 12<sup>th</sup> respondent dated 19.01.2015. This was also reiterated by the learned State Counsel appearing for the 5<sup>th</sup> and 12<sup>th</sup> respondents in open Court on 10.09.2018.

Hence there is no difficulty in formally quashing P29 by certiorari.

Relief (c) above is granted.

P30 is based on P29. If P29 is withdrawn or quashed, P30 cannot survive independently.

In addition, what has been stated in P30 about imposing VAT on the income generated through private sample testing has been reiterated in the Resolution marked P28, which part has not been challenged by the petitioners in this application.

Hence I formally quash P30.

Relief (d) above is granted.

The principal argument of the learned counsel for the petitioners in respect of the relief (c) above was that “*the financial powers of the Municipal Council are with the Standing Committee on Finance and the (General) Council*” and not with the 5<sup>th</sup> respondent Commissioner of Local Government or the 12<sup>th</sup> respondent Governor of the Province.

There cannot be any dispute that Resolutions marked P8, P14 and P28 referred to in (e) and (f) above were adopted by “*the Standing Committee on Finance and the (General) Council*”.

Hence the petitioners whilst accepting the parts contained in P28 which are favourable to them, cannot successfully challenge one unfavourable part of it whereby the petitioners’ extra remuneration was reduced (not totally denied) after serious deliberations. That decision to revise the extra remuneration in respect of testing of private samples using State resources, in my view, is not *ex facie* unreasonable to quash by way of certiorari.

Relief (e) cannot be granted.

The petitioners cannot in any event ask this Court to compel the respondents by mandamus to make those extra payments according to the Resolution marked P8 and/or P14. Resolution P8 was amended by Resolution P14. Resolution P14 was further amended by Resolution P28. There is no illegality or irregularity in it. Such amendments can, according the petitioners themselves, be done by “*the Standing Committee on Finance and the (General) Council*”. There is absolutely no basis for relief (f) above.

Relief (f) is refused.

Application of the petitioners is partly allowed.

No costs.

Judge of the Court of Appeal