

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

In the matter of an application for mandates in the nature of Writs of Certiorari and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No. 39/2021**

Wawulanbokka Gamage Lalith Dharmakeerthi,  
No. 97, Moraketiya Road, Embilipitiya.

**PETITIONER**

**Vs.**

- 1) Hon. Tikiri Kobbekaduwa,  
Governor, Sabaragamuwa Province.
- 2) Ranjani Jayakody,  
Chief Secretary, Sabaragamuwa Province.
- 3) Dulip Somiratne,  
Commissioner of Local Government,  
Sabaragamuwa Province.  
  
1<sup>st</sup> – 3<sup>rd</sup> Respondents are at  
Provincial Council Complex,  
New Town, Ratnapura.
- 4) W.L.S. Awantha,  
Secretary, Embilipitiya Urban Council.
- 5) Herath Mudiyanseelage Rohana Anura Kumara,  
371/5/1, Adhikaramtenna, Pilimathalawa.
- 6) Subasinghe Pathiranage Dinesh Madusanka,  
Deputy Chairman, Embilipitiya Urban Council.
- 7) Embilipitiya Urban Council, Embilipitiya.

**RESPONDENTS**

**Before:** Arjuna Obeyesekere, J / President of the Court of Appeal  
Mayadunne Corea, J

**Counsel:** Faiszer Mustapha, P.C., with Pulasthi Rupasinghe, Tharaka Nanayakkara and Dananjaya Perera for the Petitioner

Sumathi Dharmawardena, P.C., Additional Solicitor General with Manohara Jayasinghe, Senior State Counsel and Ms. Avanti Weerakoon, State Counsel for the 1<sup>st</sup> – 3<sup>rd</sup> Respondents

**Supported on:** 16<sup>th</sup> March 2021 and 25<sup>th</sup> March 2021

**Written** Tendered on behalf of the Petitioner on 5<sup>th</sup> April 2021

**Submissions:**

Tendered on behalf of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents on 5<sup>th</sup> April 2021

**Decided on:** 3<sup>rd</sup> June 2021

**Arjuna Obeyesekere, J., P/CA**

The Petitioner states that he was elected to the Embilipitiya Urban Council in 2011. He had initially been appointed as the Vice-Chairman of the Council, and in April 2015 had been appointed as the Chairman, which post he held until the dissolution of the Council on 31<sup>st</sup> July 2015. The Petitioner states that he successfully contested the Kalagediara ward of the Embilipitiya Urban Council from the Sri Lanka Podujana Peramuna at the Local Government elections held in February 2018. The Petitioner was declared elected as a member of the Embilipitiya Urban Council in March 2018<sup>1</sup> and thereafter declared appointed as the Chairman of the Council.<sup>2</sup>

The Petitioner states that during his tenure as Chairman of the Embilipitiya Urban Council, he had introduced several projects to uplift and develop the effective management of the Council as well as the Province. The Petitioner also states that he had maintained good financial discipline and even managed to pass each annual budget from the time he started serving the Council as its Chairman, including the

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<sup>1</sup>Vide Gazette No. 2061/42-9 dated 9<sup>th</sup> March 2018 marked 'P2'.

<sup>2</sup>Vide Gazette No. 2064/5 dated 26<sup>th</sup> March 2018 marked 'P3'.

budget for 2021, despite the many challenges faced by the Council due to the Covid-19 pandemic.

The Petitioner states that despite the above, the 1<sup>st</sup> Respondent, the Governor of the Sabaragamuwa Province, acting in terms of the powers vested in him under Section 184(1A) of the Urban Councils Ordinance, as amended (**the Ordinance**) read with Section 2 of the Provincial Councils (Consequential Provisions) Act No. 12 of 1989 (**the Act**) had published a notice in Extraordinary Gazette No. 2210/50 dated 15<sup>th</sup> January 2021, marked '**P8**', appointing the 5<sup>th</sup> Respondent, a retired Judge of the High Court to conduct an inquiry whether the Petitioner has contravened the provisions of Section 184(1) of the Ordinance and submit his report within three months.

The 1<sup>st</sup> Respondent, exercising the powers vested in him under the provisions of Section 184(1B) of the Ordinance, read with Section 2 of the Act, has made a further Order suspending the Petitioner from the post of Chairman with immediate effect, and appointed the 6<sup>th</sup> Respondent, Vice Chairman of the Embilipitiya Urban Council, to perform the duties and functions of the Chairman during the period of suspension of the Chairman. The said Order too has been published in the aforementioned Extraordinary Gazette, marked '**P8**'.

The Petitioner states that he subsequently received a charge sheet dated 15<sup>th</sup> January 2021, marked '**P10**', containing eight charges which was to be inquired into by the 5<sup>th</sup> Respondent.

The charges contained in '**P10**' can be summarized as follows:

1. The Petitioner has failed to utilize CCTV facilities obtained on or about 28<sup>th</sup> August 2018 for a sum of Rs. 1,430,000 for the purpose for which they were procured, thereby violating the provisions of Section 184(1)(d) of the Ordinance.
2. The Petitioner, having participated in the procurement process relating to the procurement of the said CCTV cameras, had thereafter functioned as the

Chairman of the Price Evaluation Committee thereby acting in violation of the provisions of Section 184(1)(d) and (e) of the Ordinance.

3. The Petitioner had failed to appoint a Technical Evaluation Committee prior to calling for quotations for the said CCTV system, and thereby failed to carry out a proper technical assessment relating thereto. The Petitioner has therefore violated the provisions of Section 184(1)(d).
4. The Petitioner has failed to ensure that the CCTV system is installed in the specified locations, thereby violating the provisions of Section 184(1)(c).
5. The Petitioner has signed an agreement to obtain security services from 1<sup>st</sup> December 2020 – 30<sup>th</sup> November 2021 without obtaining the prior sanction of the 7<sup>th</sup> Respondent Council, thereby acting in violation of Sections 39 and 184(1)(e).
6. The Petitioner has presented a proposal at a Council meeting on 12<sup>th</sup> March 2020 to allow photocopies to be taken at Rs. 4 each in the Embilipitiya Public Library without following the procedure laid down for the presentation of such proposals, thereby violating the provisions of Section 184(1)(d).
7. The Petitioner has failed to follow the due procedure by permitting a proposal to be taken up for the vote before it was seconded.
8. Even though an official vehicle had been assigned to him, the Petitioner had used a vehicle of the 7<sup>th</sup> Respondent Council (32-4180) in the month of July 2020.

Aggrieved by the decision of the 1<sup>st</sup> Respondent in 'P8' to suspend him as Chairman and appoint an Inquiry Officer and the issuance of the Charge Sheet 'P10', the Petitioner filed this application on 25<sup>th</sup> January 2021. By an amended petition dated 15<sup>th</sup> February 2021, the Petitioner has sought *inter alia* the following relief:

- (a) A Writ of Certiorari to quash the decision in 'P8' to suspend the Petitioner from the office of Chairman;

- (b) A Writ of Certiorari to quash the decision in 'P8' to appoint the 5<sup>th</sup> Respondent to conduct an inquiry against the Petitioner;
- (c) A Writ of Certiorari to quash the charge sheet 'P10';
- (d) A Writ of Prohibition preventing the 1<sup>st</sup> – 7<sup>th</sup> Respondents from taking any further steps pursuant to 'P8';
- (e) A Writ of Prohibition preventing the 6<sup>th</sup> Respondent from exercising any powers and performing any duties of the Chairman of the 7<sup>th</sup> Respondent Urban Council.

In considering the above relief, I shall bear in mind the judgment of Lord Diplock in **Council of Civil Service Unions vs Minister for the Civil Service** (the GCHQ case)<sup>3</sup> where he identified '*illegality*', '*irrationality*' and '*procedural impropriety*' as the three heads upon which administrative action is subject to control by judicial review.

The principal argument of the learned President's Counsel for the Petitioner is that there is no basis to present any charges against him, and that the charges set out in 'P10' do not warrant an inquiry being held and/or the Petitioner being suspended from the Office of Chairman. Prior to considering the above argument, I would like to briefly consider the provisions of the Ordinance under which the 1<sup>st</sup> Respondent has acted.

The Ordinance contains detailed provisions which empower the Minister entrusted with the subject of local government to *inter alia* remove a Chairman of an Urban Council. In terms of Section 184(1) of the Ordinance:

*"If at any time the Minister is **satisfied that there is sufficient proof of-***

- (a) persistent refusal to hold or attend meetings or to vote or to transact business at any meetings that may be held; or*
- (b) wilful neglect, or misconduct in the performance of the duties imposed by this Ordinance; or*

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<sup>3</sup>1985 AC 374.

(c) *persistent disobedience to or disregard of the directions, instructions or recommendations of the Minister, or the Commissioner; or*

(d) *incompetence and mismanagement; or*

(e) *abuse of the powers conferred by this Ordinance,*

*on the part of the Chairman or on the part of any Urban Council or any of the members thereof, the Minister may, as the circumstances of each case may require, by Order published in the Gazette -*

(i) *remove the Chairman from office; or*

(ii) *remove all or any of the members from office of the Council from office, and the provisions of section 12 (3) shall thereupon apply; or*

(iii) *dissolve the Council;*

*and such Order shall as soon as may be convenient be laid before Parliament.”*

The power of the Minister to act in terms of Section 184(1) is subject to the condition set out in Section 184(1A), which reads as follows:

*“The Minister shall before making an Order under subsection (1), appoint **for the purpose of satisfying himself** in regard to any of the matters referred to in subsection (1), a retired judicial officer to inquire into and report upon such matter within a period of three months, and such officer shall in relation to such inquiry have the powers of a Commission of Inquiry appointed under the Commissions of Inquiry Act”.*

I must note at this stage that in terms of Section 184(1B)(a)(i) of the Ordinance,

*“When the Minister appoints a retired judicial officer under subsection (1A) to inquire into any matter, the Minister may **as the circumstances of each case may require** by Order published in the Gazette, suspend the Chairman from office and direct the Vice-Chairman or, where the office of Vice-Chairman is*

*vacant, or where the Vice-Chairman has been suspended, the Assistant Commissioner of Local Government of the region to exercise the powers and perform the duties of the Chairman.”*

Section 2(1)(a) of the Act provides as follows:

*“Where any power or function is conferred on or assigned to a Minister or to a public officer, as the case may be, by any written law made prior to November 14, 1987 on any matter set out in List I of the Ninth Schedule, such power or function may,*

*(a) if such power or function is conferred on, or assigned to, a Minister, be exercised or discharged, in relation to a Province and unless the context otherwise requires, by the Governor of that Province or the Minister of the Board of Ministers of that Province to whom the subject has been assigned; and accordingly, references in every such written law to a Minister shall be deemed to include references to a Governor of a Province or the Minister of the Board of Ministers of such Province to whom the function has been assigned;....”*

Thus, in terms of Section 2(1)(a) of the Act, the powers vested in the Minister in terms of Section 184(1), (1A) and (1B) of the Ordinance can be exercised by the Governor. The 1<sup>st</sup> Respondent therefore:

- (1) Has the power and authority under Section 184(1A) of the Ordinance to appoint the 5<sup>th</sup> Respondent, a retired Judge of the High Court, to inquire and report within three months, whether the Petitioner has contravened the provisions of Section 184(1) of the Ordinance;
- (2) Has the power under Section 184(1B)(a)(i) of the Ordinance to suspend the Petitioner from holding the office of Chairman of the 7<sup>th</sup> Respondent, and appoint the 6<sup>th</sup> Respondent to act as Chairman in the interim period.

Therefore, what remains to be considered is whether the 1<sup>st</sup> Respondent acted irrationally or unreasonably in initiating an inquiry and in suspending the Petitioner from the office of Chairman.

Having identified the three grounds on which judicial review would lie, Lord Diplock went on to state as follows:<sup>4</sup>

*“By ‘irrationality’ I mean what can now be succinctly referred to as ‘Wednesbury unreasonableness.’<sup>5</sup> It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”*

There is however growing precedence to show that English Courts have attempted to reduce the rigour of “Wednesbury unreasonableness” over the years. The case of **Secretary of State for Education and Science v Tameside Metropolitan Borough Council**,<sup>6</sup> decided prior to the **GCHQ case** provides for what can be considered a more balanced test:

*“In public law, “unreasonable” as descriptive of the way in which a public authority has purported to exercise a discretion vested in it by statute has become a term of legal art. To fall within this expression it must be conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt.”*

It has been held that *“the standard adopted in Tameside appears to be more realistic, and balanced.”*<sup>7</sup> I would therefore apply the less rigorous test laid down in **Tameside** in deciding the reasonableness of the two decisions before me, for the reason that what is at stake in this application is the office of an elected representative of the people. The decision to appoint an inquiry officer and the decision to suspend the Petitioner must not only be reasonable but is a decision that should be arrived at carefully, for the reason that such a decision may involve hardship and cast a slur on the good name of the Petitioner.

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<sup>4</sup> GCHQ case; supra.

<sup>5</sup> Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] (1)KB223

<sup>6</sup> [1977] AC 1014.

<sup>7</sup> See Colonel U.R. Abeyratne v. Lt. Gen. N.U.M.M.W. Senanayake and Others [CA (Writ) Application No. 239/2017; CA Minutes of 7<sup>th</sup> February 2020] Also see KIA Motors (Lanka) Limited v. Consumer Affairs Authority [CA (Writ) Application No. 72/2013; CA Minutes of 26<sup>th</sup> May 2020] U.A.A.J Ukwatte and another v. Minister of Education and others [CA (Writ) Application No. 403/2019; CA Minutes of 12<sup>th</sup> June 2020]



As held in Yatawara vs Sarath Ekanayake and Others,<sup>8</sup> local government bodies “play an extremely important role in the day to day affairs of the people and to deprive the people of their duly elected Chairman without any legal basis affects the smooth administration of the pradeshiya sabha and the quality of the services provided to the people. While it is absolutely important that prompt and effective action is taken against any mismanagement or abuse of power by a Chairman or member of a local authority, it is equally important that the checks and balances that have been laid down by the legislature should be strictly adhered to.”

I shall now consider the argument of the learned President’s Counsel for the Petitioner that there is no basis to present any charges against the Petitioner. The learned Additional Solicitor General for the 1<sup>st</sup> - 3<sup>rd</sup> Respondents submitted that starting from July 2019, there have been several complaints and allegations made against the Petitioner in relation to the manner in which the affairs of the 7<sup>th</sup> Respondent Urban Council were being conducted and managed by the Petitioner. He submitted that by a letter dated 9<sup>th</sup> July 2019 marked ‘**1R4**’, a group of seven Councillors had complained to the Assistant Commissioner of Local Government of several matters involving fraud, misappropriation and financial mismanagement in the 7<sup>th</sup> Respondent Urban Council under the leadership of the Petitioner.

It is admitted by the Petitioner that by letter dated 2<sup>nd</sup> August 2019, marked ‘**P20**’ under the title “අධිලේඛනය නගර සභාවේ පාලන කටයුතු බිඳ වැටීම”, the then Commissioner of Local Government, Sabaragamuwa Province had informed the Petitioner that the affairs of the Urban Council must be conducted in terms of the law and that the Petitioner was put on notice as far back as August 2019 that steps may have to be taken in terms of Section 184 of the Ordinance.

It is further admitted by the Petitioner that a meeting was held on 21<sup>st</sup> August 2019 with the participation of the Petitioner, the then Governor of the Sabaragamuwa Province, officials of the Department of Local Government of the Sabaragamuwa Province and members of the Council to discuss issues, complaints and shortcomings in relation to the administration and management of the 7<sup>th</sup> Respondent Urban Council. The proceedings of the said meeting marked ‘**1R3**’ provides a general

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<sup>8</sup>CA (Writ) Application No. 691/2009; CA Minutes of 1<sup>st</sup> February 2019.

discussion on the management and administration of the 7<sup>th</sup> Respondent under the leadership of the Petitioner, including the following:

“මුදල් කමිටුවේ තීන්දු තීරණ මහ සභාවේ අනුමැතියට යටත්ව සිදුකළ යුතුය. එහෙත් මහ සභාවට ඉදිරිපත් කරන විට අවශ්‍ය ගෙවීම් සිදුකර අවසන් වීම.

ගිවිසුම් අත්සන් කිරීමකින් තොරව මුදල් ගෙවීම් කිරීම.

එකම පවුලේ කිහිප දෙනෙකු ආයතනයේ කටයුතු සිදුකිරීම නිසා ගැටලු ඇතිවන බව.

ගරු සභාපති වරයා නාමයයිලි ප්‍රතිපත්තියක නොසිටීම සහ මධ්‍යස්ථව කටයුතු නොකිරීම හේතු වෙන් සභාපතිවරයා සමග කටයුතු කිරීමට නොහැකි බව.”

Several recommendations had been made at the said meeting relating to the improvement of the administration of the Urban Council, in order to ensure that the Petitioner complied with the provisions of the Ordinance. In addition, the predecessor of the 1<sup>st</sup> Respondent had stated that action will be taken in the future depending on the outcome of the investigations that would be conducted.<sup>9</sup>

Pursuant to an investigation carried out, the then Commissioner of Local Government had submitted to the then Governor a report dated 9<sup>th</sup> October 2019 marked ‘**1R4(a)**’, whereby the attention of the Governor had been drawn to several conclusions adverse to the Petitioner. The Commissioner of Local Government had thereafter requested that the Governor advise the Petitioner to manage the affairs of the Urban Council properly.<sup>10</sup>

A preliminary investigation into the affairs of the Urban Council and the Petitioner had been conducted by a three member committee. The report of the Committee dated 13<sup>th</sup> May 2020, marked ‘**1R5**’ sets out in detail the procedure followed by the Petitioner with regard to the procurement of the CCTV system and the many irregularities said to have been committed by the Petitioner in relation thereto. The recommendation of that Committee had been that steps should be taken against the Petitioner in terms of Section 184 of the Ordinance.

<sup>9</sup> “දැනට පවත්නා චාඛාවරණය සම්බන්ධයෙන් ඉදිරි විමර්ශනයකදී අනාවරණය වන කරුණු අනුව ඒ පිළිබඳව ක්‍රියා මාර්ග ගැනීමට කටයුතු කරන බව දැන්වීම”

<sup>10</sup> “පවතින ගැටුමකාරී තත්වය සභාවේ මනා පැවැත්මට අහිතකර ලෙස බලපා ඇති බැවින් එය විදිමත් පරිදි කළමනාකරණය කර ගත යුතු බව සභාපතිවරයාට උපදෙස් දීම”

The learned Additional Solicitor General submitted that another Committee of three members was appointed to inquire into the selection of a service provider for Security Services for the Urban Council. The report of the said Committee dated 4<sup>th</sup> January 2021 marked '1R9' reveal several irregularities relating to the selection of a service provider for the period 2018/19, 2019/20 and 2020/21. What is critical is the manner in which the Petitioner had proceeded to award the contract for a sum of Rs. 5.2 million on 25<sup>th</sup> November 2020 without obtaining the prior approval of the Council or the Commissioner, which is contrary to the provisions of Section 39 of the Ordinance.<sup>11</sup> What aggravates the situation is the fact that the Council had refused to approve the awarding of the said Contract, when the Petitioner presented the said matter before the Council.

It was submitted by the learned Additional Solicitor General that the charge sheet 'P10' is *reflective of the willful neglect and misconduct in the performance of the Petitioner's duties as Chairman*. It was submitted further that *the Petitioner's conduct demonstrates a lack of transparency in decision making*, which is demonstrated by the manner in which the Petitioner functioned as a member of both the Technical Evaluation Committee and the Procurement Committee.

It is in the above factual background that the learned Additional Solicitor General invited this Court to consider the submissions of the learned President's Counsel for the Petitioner relating to the charges in 'P10', the holding of an inquiry and the suspension of the Petitioner.

It is the position of the Petitioner that the above documents that have been produced by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents do not relate to inquiries that were conducted in relation to the charges contained in 'P10'. However, a perusal of the said documents shows that the matters pertaining to the CCTV system and the procurement of Security Services which form part of the charges in 'P10' have been the subject matter of the said inquiries.

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<sup>11</sup> Section 39 reads as follows:

"(1) The Chairman shall not enter into any contract on behalf of the Council for any work or service the cost of which exceeds five hundred rupees, or any contract enduring for a longer period than the time elapsing between the making of such contract and the end of the financial year, without the sanction of the Council.

(2) If the Council fails to sanction any contract the Chairman may with the approval of the Commissioner enter into such contract notwithstanding the provisions of subsection (1)."

The learned President's Counsel for the Petitioner submitted that this Court could consider the severity of the charges framed against the Petitioner in deciding whether the suspension is reasonable and relied on the following paragraph from **Faleel vs Munasinghe and Others**<sup>12</sup> to support his argument.

*"In my view, the charges taken singly or collectively do not show that the administration of the Council had deteriorated to such an extent as would justify an order suspending the appellant from office. Some of the charges are of a trivial nature; others are not sufficiently grave to warrant an order of suspension."*

I agree that an elected member must not be at the mercy of a Minister who may be from a rival political party, and that suspension cannot be on trumped up charges. On the other hand, it is important that elected officials maintain the highest standards of financial discipline and integrity when dealing with public finance. After all, they are the trustees of the People. In my view, a charge that a contract worth over Rs. 5 million was executed in contravention of the law, which is one of the charges levelled against the Petitioner, is certainly not trivial. After all, *"the objective that is sought to be achieved by an inquiry being conducted is to ensure good governance and financial discipline by the elected representatives of the people and prevent abuse of power and mismanagement"*.<sup>13</sup>

The Petitioner has produced several documents and offered lengthy explanations as to why the said charges contained in '**P10**' have no basis and should therefore be quashed along with '**P8**'. I must state that it is not the function of this Court to play the role of the Inquiry Officer and evaluate the evidence that has been produced by the Petitioner, in order to determine if the Petitioner should be exonerated from the charges that have been framed against him. The Petitioner may present all this evidence before the 5<sup>th</sup> Respondent at the inquiry that is due to be held.

The Petitioner states further that some of the charges contained in '**P10**' pertain to a period prior to August 2019, and that had the charges been so severe, disciplinary

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<sup>12</sup> SC Appeal No. 40/93; SC Minutes of 5<sup>th</sup> May 1994.

<sup>13</sup> Vide Yatawara vs Sarath Ekanayake and Others; supra.

proceedings should have commenced earlier and that there is no rational basis to suspend the Petitioner now. It is clear from the submissions of the learned Additional Solicitor General that the Respondents have not rushed to take a decision against the Petitioner but have instead afforded him room to rectify his mistakes and ensure that the affairs of the Council are managed efficiently and honestly. Thus, the decision not to act in 2019 cannot accrue to the benefit of the Petitioner. Furthermore, the fact that the Respondents did not take steps in 2019 effectively rebuts the allegations of *mala fides* that have been made against the 1<sup>st</sup> Respondent.

The documents that have been produced by the 1<sup>st</sup> Respondent illustrate that there are allegations against the Petitioner which require to be gone into at an inquiry with the participation of the Petitioner. Therefore, the decision of the 1<sup>st</sup> Respondent to initiate an inquiry by the appointment of the 5<sup>th</sup> Respondent is a decision taken by a *sensible authority acting with due appreciation of its responsibilities*.

The second matter that I must consider is whether the 1<sup>st</sup> Respondent acted reasonably in suspending the Petitioner by '**P8**'. Section 184 (1A) of the Ordinance, does not make it mandatory that the Chairman be suspended pending the outcome of the inquiry. The decision whether to suspend the Chairman is therefore at the discretion of the Minister or like in this case, the 1<sup>st</sup> Respondent.

The learned Additional Solicitor General submitted that the Petitioner's conduct and behaviour displayed a complete breakdown of the affairs of the administration of the Urban Council, and that the 1<sup>st</sup> Respondent had to take steps to suspend the Petitioner and conduct an inquiry in order to control the maladministration and the rapidly deteriorating state of affairs.

In **Mendis vs Berty Premalal Dissanayake and Others**,<sup>14</sup> the Inquiry Officer was appointed to inquire into the charges against the petitioner on 30<sup>th</sup> April 2004, and the inquiry commenced on 22<sup>nd</sup> July 2004. By an order dated 06<sup>th</sup> August 2004, the Minister suspended the Petitioner's membership and Chairmanship of the Pradeshiya Sabha of Thalawa. Having considered the provisions of Section 185(3) of the Pradeshiya Sabha Act, this Court held as follows:

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<sup>14</sup>[2006] 2 Sri LR 402.

*“Section 185 (3) specifically provides that when the Minister appoints a retired judicial officer under subsection (2) to inquire into any matter, the Minister may, as the circumstances of each case may require by order published in the Gazette suspend the Chairman from office.*

*By this provision **the Minister has discretion to suspend the Chairman depending on the circumstances of each case.** Suspension may involve hardship and may cast a slur on the good name and reputation of a duly elected member of a local authority; **as such the discretion must be exercised reasonably and with circumspection.** .... The suspension is due to an exceptional situation which plainly call for swift and immediate action; action directed to prevent a break down in the administration of the Sabha; that the circumstances call for the suspension of the Chairman from office in order to control the mal-administration. In other words, what is envisaged is a state of affairs which call for prompt action in order to arrest a rapidly deteriorating situation, lest there be a breakdown in the administration of the Sabha. Therefore the Minister is given a discretion to suspend the Chairman at the time of the appointment of the retired judicial officer to inquire into the matters in issue.”*

The learned President’s Counsel for the Petitioner submitted that ‘**P10**’ lists the documents which the prosecution will be relying on and that the 5<sup>th</sup> Respondent does not need to embark on further fact finding in order to conduct his inquiry and that there is no risk that the Petitioner will influence the inquiry. He submitted further that the Petitioner had been suspended as a form of punishment, and that in any case, the suspension of the Petitioner pending the inquiry would cause irreparable damage to the good reputation of the Petitioner as an honest politician and that the circumstances of this case do not warrant a suspension of the Petitioner prior to any proof or likely possibility of guilt.

In terms of Section 184(1B)(a)(i), simultaneous with the appointment of a retired Judicial Officer to conduct an inquiry, the 1<sup>st</sup> Respondent may suspend the Chairman *as the circumstances of each case may require*. Therefore, it is clear that suspension is not mandatory, and that it is at the discretion of the 1<sup>st</sup> Respondent. The issue therefore is whether the 1<sup>st</sup> Respondent acted reasonably in arriving at the decision that the Petitioner must be suspended. I have to go back to the submission of the

learned Additional Solicitor General in order to answer this question. Issues relating to the administration of the Embilipitiya Urban Council arose in 2019, just over a year after the Petitioner became the Chairman. The first to complain were the members of the Council. The fact that the Petitioner did not have the support of the membership of the Council is evident from his own letters dated 27<sup>th</sup> August 2019 marked '1R12a' and 17<sup>th</sup> September 2019 marked '1R12b', by which the Petitioner has admitted that the membership has refused to approve the expenditure already incurred by the Petitioner. It is for these reasons that the then Governor summoned a meeting on 21<sup>st</sup> August 2019 and advised the Petitioner to ensure that the affairs of the Council are managed efficiently and honestly, and placed the Petitioner on notice that the matters raised by the members would be investigated.

An investigation has in fact been conducted by a Committee of three members who has recommended that steps be taken against the Petitioner. It must be noted that the Petitioner has not divulged to this Court the fact that such an investigation was held. Even assuming that the incident relating to the CCTV system had taken place in 2019 and that suspending the Petitioner in 2021 would not serve any purpose, the issue that is of concern is that the Petitioner decided to proceed with the award of a contract for the provision of security services having a value of Rs. 5.2 million without obtaining the approval of the membership of the Urban Council or without the approval of the Commissioner of Local Government. This is a clear violation of Section 39 of the Act. Financial management and discipline are paramount for a local authority and its Chairman. The Petitioner has therefore acted in blatant disregard of the law. The fact that the Petitioner sought approval of the 3<sup>rd</sup> Respondent a few days prior to 'P8' being issued is in my view, irrelevant, and is a further demonstration that the Petitioner first engages in transactions and then seeks approval.

In my view, an exceptional situation had arisen of the Chairman of the Council acting in violation of the law and swift action was therefore required to prevent the administration of the Council going down the slippery slope. The deteriorating situation had to be arrested and that is what the 1<sup>st</sup> Respondent has done by suspending the Petitioner. In these circumstances, I am of the view that the decision of the 1<sup>st</sup> Respondent to suspend the Chairman is reasonable.

The learned President's Counsel for the Petitioner submitted that a Chairman of a council can be suspended only as a 'holding up operation' and strenuously relied on the judgment of the Supreme Court in **Faleel v Susil Moonesinghe and Others**<sup>15</sup> to support his position. In that case, the 1<sup>st</sup> respondent Chief Minister who was also the Minister of Local Government suspended the petitioner from the post of Chairman of the Beruwela Urban Council to which the petitioner had been elected in May 1991.

While in this application it is admitted that the applicable law is found in the Urban Councils Ordinance, it was admitted in **Faleel v Susil Moonesinghe and Others** that the provisions of the Urban Councils Ordinance do not apply as the Western Provincial Council had enacted the Devolution of Powers of Supervision of the Administration of Local Authorities Statute, No. 4 of 1991, and that what was applicable were the provisions of the said Statute.

Section 2(1) and 2(2) of the said Statute are similar to the provisions found in the Ordinance. The procedure in the Statute with regard to suspension, which is found in Section 2(3) thereof, is however different to the provisions of the Ordinance.

Section 2(3)(a) of the Statute reads as follows:

*“(a) Before appointing a retired Judicial Officer under sub section (2) to inquire into any matter the Minister may without hearing or other formality **as a holding operation**, pending the proposed inquiry and report by such officer preliminarily,*

*(i) suspend the Chief Executive Officer of the Local Authority from office and direct the Deputy Mayor or Vice Chairman of the Local Authority as the case may be ... to exercise the powers and perform the duties of the Chief Executive Officer”*

It would thus be seen that unlike under the Ordinance where the power of suspension can only be exercised once the Minister has appointed a retired Judicial Officer to inquire into and report upon such matter for the purpose of satisfying himself with regard to any of the matters referred to in Section 184(1) of the

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<sup>15</sup> Supra.



Ordinance, under the Statute, the Minister can suspend a Chairman prior to appointing a retired Judicial Officer.

It is in that context that Chief Justice G.P.S. De Silva held as follows:

*“Mr. H.L. De Silva, for the appellant submitted that the words “as a holding operation” in Section 2(3) of the Statute were designedly used as a limiting factor on the power of suspension; that those words envisage a crisis or an emergency in the administration of the Council. On the other hand, Mr. L.C. Seneviratne for the respondent, strenuously contended that on the plain meaning of the words, the construction sought to be placed by Mr. De Silva is untenable; that there is nothing in the statute which warrants the restriction of the making of an order of suspension to a “crisis” or “emergency” in the administration of the Council. Mr. Seneviratne argued that the words “as a holding operation” mean no more than suspension pending inquiry as a matter of good administration.*

*On a reading of Section 2(3), it is clear that the making of an order of suspension is discretionary; it is not automatic. Suspension may involve hardship and may cast a slur on the good name and reputation of a duly elected member of a local authority; as such, the discretion must be exercised reasonably and with circumspection. The words “without hearing or other formality” which precede the words “as a holding operation” are crucial to a proper understanding of the scope of the power of suspension. These words strongly suggest an exceptional situation which plainly calls for swift and immediate action; action directed to prevent a breakdown in the administration of the Council; that the circumstances call for the removal of the appellant from office in order to control the maladministration. It is not a step to be taken lightly or as a matter of course. In other words, what is envisaged is a state of affairs which call for prompt action in order to arrest a rapidly deteriorating situation, lest there be a breakdown in the administration of the Council.”*

Thus, it is clear that the Supreme Court increased the threshold that must be satisfied in order to suspend a Chairman in view of the fact that a suspension is not preceded by a decision to have an inquiry. The legal situation in this application is

different in that the 1<sup>st</sup> Respondent has already appointed a retired Judge of the High Court and the inquiry proceedings must be concluded within three months, unlike in the situation in **Faleel vs Munasinghe and Others** where the suspension took place without the appointment of an inquiry officer, thereby depriving Faleel of the safeguard of having an inquiry conducted by a Judicial Officer within three months. Furthermore, the Minister must be satisfied that the *circumstances may require* a suspension.

When I consider the fact that the conduct of the Petitioner has been under review since mid 2019 and the fact that he has executed a contract worth over Rs. 5 million without obtaining the approval of either the Council or the Commissioner of Local Government and thereby violated the provisions of Section 39 of the Ordinance, I am fortified in my view that the high threshold laid down by the Supreme Court in **Faleel vs Munasinghe and Others** has been achieved in this application and that the decision to suspend the Petitioner is not unreasonable.

This brings me to the final submission of the learned President's Counsel for the Petitioner. He submitted that the Petitioner's term of office as the Chairman of the 7<sup>th</sup> Respondent expires on or about 9<sup>th</sup> March 2022, and that if the inquiry under reference continues for an extended period of time, a significant portion of the remainder of the Petitioner's term would lapse. The Petitioner states that it would therefore tantamount to an expulsion.

It would perhaps be appropriate to refer at this stage to the following paragraph from **Yatawara vs Sarath Ekanayake and Others**,<sup>16</sup> which outlines the safeguards in the Law that ensures that the rights of a member are protected while an inquiry can also be conducted:

*"Members are elected by the people to the pradeshiya sabha every five years, with an expectation that the members so elected would address the day to day issues of the ward in an expeditious and efficient manner. However, not only should the elected representatives of the people be efficient, they should ensure good governance at all times and maintain strict financial discipline in respect of the funds of the local authority and refrain from any abuse of power. The Act*

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<sup>16</sup> Supra.

*provides a mechanism by way of Section 185 to address incompetence, mismanagement, misconduct and abuse of power and thereby ensure good governance by empowering the Minister to suspend and/or remove a member, Chairman or dissolve even an entire local council.*

*The legislature however has been conscious that the powers of suspension and removal of a member, conferred on the Minister by Section 185 of the Pradeshiya Sabha Act can be abused. The provisions in Section 185(1)-(3) of the Act seeks to strike a balance between the powers of the Minister to deal with mismanagement and abuse of power on the one hand and the rights of the Chairman to protect himself from any arbitrary exercise of that power by the Minister, on the other. As part of this process, several checks and balances have been set out in Section 185 of the Act.*

*The Act specifies that a suspension can be effected only once an Inquiry Officer has been appointed. The Act requires the Minister to appoint a retired Judicial Officer to inquire into such mismanagement, inefficiency and abuse of power, thereby demonstrating the seriousness with which the inquiry must be conducted and the credibility that is attached to the inquiry. In keeping with the principles of administrative law, the Inquiry Officer is required to provide both parties an opportunity to lead the necessary oral and documentary evidence to substantiate the charges as well as rebut the charges, thus ensuring that the principles of a fair hearing are adhered to at all times during the inquiry. The Inquiry Officer is required to submit a report within a period of three months of being appointed, to enable the Minister to satisfy himself with regard to the allegations against the Chairman, the member or the Council itself. As held by the Supreme Court in **Sarath Dharma Siri Bandara vs. Sarath Ekanayake**<sup>17</sup>, the Minister cannot remove the Chairman on his own accord and the report of the Inquiry Officer is necessary for the Minister to take a decision. The entire process outlined above must therefore be conducted in a manner that is fair by all parties.”*

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<sup>17</sup> SC Appeal No. 85/2011; SC Minutes of 18<sup>th</sup> September 2014.

*“It is in this background that this Court, while agreeing with the decision of the Supreme Court in Sarath Dharma Siri Bandara’s case,<sup>18</sup> takes the view that an Inquiry Officer must take control of the proceedings and endeavour to conclude the inquiry as expeditiously as possible and within the 3 month period initially made available. Any extension of time must be supported by adequate reasons from the Inquiry Officer as to why the inquiry could not be concluded within 3 months. Such a course of action would ensure that the objective of Section 185 of the Act is achieved.”*

I agree that a suspension must not be imposed as a means of punishment or expulsion, and that the inquiry must be conducted expeditiously with the cooperation of both parties. In this instance, the inquiry has not even commenced in view of the undertaking given that the parties will await the outcome of this application. Once the inquiry is commenced by the 5<sup>th</sup> Respondent and in the event an extension of time is sought at the end of the three month period, the 1<sup>st</sup> Respondent must ascertain the necessity for such an extension and why the inquiry could not be concluded within three months, and thereafter consider whether the suspension of the Petitioner must continue, prior to arriving at a decision.

Taking into consideration all of the above facts, I see no legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed, without costs.

**President of the Court of Appeal**

**Mayadunne Corea, J**

I agree

**Judge of the Court of Appeal**

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<sup>18</sup> Supra