

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. 57/2021

H.M. Lalantha Sumith Seneviratne,
No. 304, Upper Street, Padiyathalawa.

PETITIONER

Vs.

- 1) Pradeshiya Sabhawa of Padiyathalawa, Padiyathalawa.
- 2) G. Thamara Darmaseeli,
Secretary, Pradeshiya Sabhawa,
Padiyathalawa.
- 3) K.M. Dinesh Parakrama,
Vice Chairman,
Pradeshiya Sabha, Padiyathalawa.
- 4) H.M. Karunatilake.
- 5) B.A.G. Susantha Gunaratne.
- 6) R.B. Chetiyapala.
- 7) H.M. Ariyapala.
- 8) T.M. Upul Hemantha.
- 9) H.M. Chandrika Malkanthi.
- 10) B.M. Geethika Priyangani.
- 11) B.M. Ariyawathi.
- 12) Iresh Madushanka De Saram.
- 13) M.P. Amarasinghe.
- 14) H.M. Sirisena.
- 15) W.M. Nimal Premakumara.
- 16) A.A. Indrani Amarasinghe.
- 17) D.M. Geethika Mangalika.
- 18) R.M. Anura Rajapaksha.

- 19) T.B. Chandrapala.
- 20) D.M. Duminda Lakmal.
- 21) N.M. Vimukthi Lankarathne.

- 22) Anuradha Yahampath,
Governor, Eastern Province,
Governor's Secretariat,
Lower Road, Orr Hill, Trincomalee.

- 23) N. Maniwanan,
Commissioner of Local Government,
Department of Local Government,
Kanniya Road, Varothayanagar,
Trincomalee.

- 24) A.T.M.Rafee,
Regional Assistant Commissioner of Local
Government.
Office of the Assistant Commissioner of
Local Government,
Kachcheri Road, Ampara.

- 25) Manoj Rasika Lekamge,
Chief Management Accountant.

- 26) N.H.M. Chithrananda.
Secretary,
State Ministry of Provincial Councils and
Local Government Affairs,
Colombo 02.

- 27) Thilina Wickremaratne,
Returning Officer,
Pradeshiya Sabhawa, Padiyathalawa.

- 28) Sagara Kariyawasam,
Secretary, Sri Lanka Podujana Peramuna,
Battaramulla.

- 29) Sri Lanka Podujana Peramuna,
Battaramulla.

RESPONDENTS

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

Counsel: Thusitha Wijeskoon for the Petitioner

Sanjeeva Jayawardena, P.C., with Rukshan Senadheera for the 4th – 8th, 10th, 11th, 13th and 16th Respondents

Manohara Jayasinghe, Senior State Counsel for the 22nd Respondent

Supported on: 18th February 2021, 3rd March 2021, 25th March 2021 and 30th March 2021

Written Tendered on behalf of the Petitioner on 19th April 2021

Submissions:

Tendered on behalf of the 1st Respondent and 7th - 17th Respondents on 20th April 2021

Tendered on behalf of the 4th – 8th, 10th, 11th, 13th and 16th Respondents on 22nd April 2021

Decided on: 10th June 2021

Arjuna Obeyesekere, J., P/CA

The issue in this application relates to the failure on the part of the Petitioner, the Chairman of the 1st Respondent, Padiyathalawa Pradeshiya Sabha to have the budget of the 1st Respondent for the year 2021 passed by the members of the 1st Respondent (i.e. the 3rd – 21st Respondents), and the consequences that should flow from such failure.

The Pradeshiya Sabha Act (**the Act**) has been enacted to provide for the establishment of Pradeshiya Sabhas with a view to provide greater opportunities for the people to participate effectively in the decision-making process relating to administrative and development activities at a local level. In terms of Section 2(1) of the Act, the Minister may, with a view to facilitating the effective participation of the people in local government and development functions, by Order published in the Gazette declare any area to be a Pradeshiya Sabha area for the purposes of the Act. Section 3 provides that, “*the Pradeshiya Sabha constituted for each Pradeshiya Sabha*

area shall be the local authority within such area and be charged with the regulation, control and administration of all matters relating to public health, public utility services and public thoroughfares and generally with the protection and promotion of the comfort, convenience and welfare of the people and all amenities within such area". It is observed that in addition to the above, the relevant Pradeshiya Sabhas are responsible for the maintenance of public drains, waterways, public fairs, local markets, lighting of streets and public places etc. Thus, a Pradeshiya Sabha plays a very important role in the day to day lives of our people.

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.

I shall at the outset consider the four provisions of the Act, which are particularly relevant to the issue that has arisen for the determination of this Court, namely Sections 14, 168, 169 and the proviso to Section 169 of the Act.

I shall commence with Section 168, in terms of which:

- (1) The Chairman of every Pradeshiya Sabha shall each year on or before such date and in such form as may be specified by rules, prepare and submit to the Pradeshiya Sabha, a budget for the next succeeding year, and containing an estimate of the available income and details of the proposed expenditure for the ensuing year.*
- (2) Every **Pradeshiya Sabha shall finally consider and adopt the budget** together with the amendments, if any, before the commencement of the year to which such budget relates.*
- (3) The Chairman of the Pradeshiya Sabha may at any time prepare a supplementary budget and lay it before the Pradeshiya Sabha*

(4) *The Pradeshiya Sabha **may pass**, modify or reject all or any of the items in any budget or supplementary budget or add any item thereto.*

The necessity for a Pradeshiya Sabha to have a budget for each year and the obligation of the Chairman of the Pradeshiya Sabha to take responsibility for the preparation of the budget in terms of the law and thereafter **submit** the said budget to the Pradeshiya Sabha for the Sabha to finally consider and pass the budget is clearly established by Section 168.

As submitted by the learned President's Counsel for the 4th – 8th, 10th, 11th, 13th and 16th Respondents, the ability of the Pradeshiya Sabha to carry out its statutory functions in the following year is intrinsically linked to having a budget duly passed by the members of the Pradeshiya Sabha, and demonstrates the ability of the Chairman to command the confidence of the majority of the Pradeshiya Sabha as well as have the necessary finances to attend to the day to day operations and the vital developmental activities of the Sabha.

The next provision that is relevant to this application is Section 169 which reads as follows:

*“If the Pradeshiya Sabha **modifies** or **rejects** all or any of the items in any or supplementary budget or **adds** any item thereto and the **Chairman does not agree** with any **such decision** of the Pradeshiya Sabha he shall re-submit the budget or supplementary budget to the Pradeshiya Sabha for further consideration. Where a budget or supplementary budget is not **passed** by the Pradeshiya Sabha within two weeks after it is re-submitted, such budget or supplementary budget shall, notwithstanding that it has not been passed by the Pradeshiya Sabha, **be deemed** to be **the duly adopted budget** or supplementary budget of the Pradeshiya Sabha.”*

The effect of Section 169 is that by operation of law, the budget **submitted** by the Chairman shall be considered as the duly adopted budget of a Pradeshiya Sabha, even though the said budget has not been passed by the Pradeshiya Sabha and therefore does not have the support of the majority of the members of the Pradeshiya Sabha. The law therefore has provided a concession to a Chairman of a

Pradeshiya Sabha to function for a period of two years, notwithstanding that he may not have the support of the majority of the Pradeshiya Sabha to pass the budget. It must be kept in mind that notwithstanding the above deeming provision, the obligation placed on the Chairman by Section 168 to submit the budget to the Pradeshiya Sabha must still be complied with, and that the concession under Section 169 extends only to a Chairman who submits a budget to the Pradeshiya Sabha and permits the members to vote on the said budget.

It must be noted that in terms of Section 14 of the Act:

- “(1) All matters or questions authorized by this Act or by any other written law to be **decided** by a Pradeshiya Sabha shall be **decided upon by the majority of members** present at any meeting of the Pradeshiya Sabha held in accordance with the provisions of this Act*
- (2) Where the **votes of the members** present at any meeting are equally divided in regard to any question, the Chairman, Vice-Chairman or other member presiding at the meeting shall, in addition to his vote as a member, have a casting vote.”*

Thus, wherever the Act refers to a decision of the Pradeshiya Sabha or requires a decision to be taken by the members of the Pradeshiya Sabha, it is imperative that such decision is taken by way of a vote of the members present at a general or special meeting of the Pradeshiya Sabha. This position is clearly reflected in Section 169 of the Act which requires a decision of the Pradeshiya Sabha upon the submission of the budget and upon re-submission.

Section 169 was amended by Section 17 of the Local Authorities (Special Provisions) Act No. 21 of 2012 by the insertion of the following proviso:

*“Provided that, if the Council according to sections 168 and 169 of this Act modifies or **rejects all or any items in any budget** or supplementary budget or adds any item thereto which was submitted to the Council at any time by the Chairman **after a period of two years** since the commencement of the term of office of the Council, and*

*if the Chairman **does not agree** to such **decision** of the Council,*

***he shall resubmit** the said budget to the Council for further consideration.*

*Where a budget or supplementary budget **is not passed** by the Council within two weeks **after it is resubmitted** for the second time,*

*the **Chairman** shall be **deemed to have resigned** from the office of Chairman at the end of the said period of two weeks.”*

Thus, with the introduction of the proviso in 2012, the concession provided to a Chairman by Section 169 to continue in office notwithstanding his inability to have the duly submitted budget passed by a majority of the members of the Pradeshiya Sabha has been limited to the first two years of office. After the first two years, it is not only imperative that the budget is submitted to the Pradeshiya Sabha, it is also imperative that the budget is passed by a majority decision. The law has provided a Chairman with two opportunities to do so. The difference between the first two years and the next two years is that, in the latter two years, if the Chairman fails to submit and have the budget approved at least at the second opportunity, the Chairman shall be deemed to have resigned from his office.

In my view, Section 169 and the proviso contemplates two decisions of the Pradeshiya Sabha which attracts the provisions of Section 14 and therefore requires a vote by the Pradeshiya Sabha. The first is the **decision** of the Pradeshiya Sabha to modify, add or reject the budget. The acceptance of a modification and/or an addition, or the rejection of the budget as a whole, should be by way of a majority vote of the Pradeshiya Sabha. The second is the decision of the Pradeshiya Sabha whether to pass the budget that has been re-submitted by the Chairman.

The above provisions can be summarised as follows:

- a) The obligation of preparing the budget is with the Chairman – vide Section 168;
- b) The obligation of submitting the budget to the Pradeshiya Sabha is with the Chairman – vide Section 168;

- c) The budget must be passed by the Pradeshiya Sabha and the obligation of having it passed by the Pradeshiya Sabha is at all times with the Chairman – vide Section 169;
- d) In the first two years however, even if the budget is not passed, by operation of law, the budget submitted by the Chairman is the duly adopted budget of the Pradeshiya Sabha – vide Section 169;
- e) After the first two years, the Chairman must have the budget passed by the Pradeshiya Sabha, for which he has been provided two opportunities – vide the proviso to Section 169;
- f) After the first two years, the failure on the part of the Chairman to have the budget passed on the two occasions afforded to him would attract the consequences set out in the proviso to Section 169 – i.e. the Chairman is deemed to have resigned from office.

I shall now consider the facts of this application.

The Petitioner states that he contested the Local Government elections held in 2002 and was elected as a member of the 1st Respondent. He had thereafter been elected as a member of the 1st Respondent in 2006, 2011 and 2018. The Petitioner has functioned as the Leader of the Opposition until 2006 and has been the Chairman of the 1st Respondent since then.

The Petitioner states further that the budgets submitted by him for 2019 and 2020 were passed without any dispute. He states that since the middle of 2019, he has had issues with the 3rd Respondent, who is the Vice Chairman of the Pradeshiya Sabha. He claims that the 3rd Respondent had tarnished his reputation which has resulted in the Petitioner being suspended from his membership in the Sri Lanka Podujana Peramuna. The Petitioner claims further that the 3rd Respondent is making all endeavours to remove him from the post of Chairman, and that there is a division among the members of the 1st Respondent elected from the Sri Lanka Podujana Peramuna.

The Petitioner admits that he submitted the budget for the year 2021 to the Sabha at its meeting held on 20th November 2020. The minutes of the meeting have been marked 'X9'. He states that only the 18th Respondent had proposed amendments to the budget and that he accepted all the amendments that were presented. The 3rd Respondent had thereafter called for a vote, to which the Petitioner had agreed, and the budget had been defeated by 11 votes to 7, with the 18th Respondent too voting against the budget. The Petitioner however states that in terms of Section 169 of the Act, *the budget of 2021 presented by the Petitioner should be considered as a duly approved budget by the Sabha.*

On 14th December 2020 - the 24th Respondent, the Assistant Commissioner of Local Government, Ampara - had served on the Petitioner a letter dated 10th December 2020 marked 'X13' issued by the 23rd Respondent, the Commissioner of Local Government, Eastern Province informing the Petitioner that if he is in agreement with the amendments, he must incorporate same and re-submit to the Pradeshiya Sabha for its approval. The Petitioner has disregarded the above intimation.

The Petitioner states that by letter dated 21st December 2020, he sought a clarification from the 26th Respondent, the Secretary, State Ministry of Provincial Councils and Local Government Affairs. A copy of the said letter sent by the Petitioner has not been produced to this Court. The 26th Respondent has replied the above letter on the same date – vide 'X12' – where he has stated that the Chairman must re-submit the budget if the Chairman is not agreeable with the rejection. The 26th Respondent then goes onto state that in view of the reasons set out in the letter sent by the Petitioner, it appears that the proviso in Section 169 does not apply as the Petitioner has agreed with all the amendments proposed and that the budget submitted by the Petitioner is the approved budget for 2021. Quite apart from the letter by which advise has been sought not being tendered to this Court, in my view 'X12' does not set out the correct legal position, particularly in respect of the mandatory requirement in Section 169 of the Act to have the budget passed by the vote of the Pradeshiya Sabha.

The next meeting of the 1st Respondent has been held on 28th December 2020. According to the minutes of the said meeting marked 'X10', the following had transpired:¹

"2021 වර්ෂයේ අයවැය සංශෝධන සහිතව සහ සම්මත කිරීම

2021 වර්ෂයේ අයවැය සංශෝධන සහිතව සහ සම්මත කිරීමට ගරු මන්ත්‍රී ඩී.එම්.දුමන්ද ලක්මාල් මහතා යෝජනා කළ අතර එය ගරු මන්ත්‍රී එන්.එම්.විමුක්ති ලංකාරත්න මහතා විසින් ස්ථිර කරන ලදී.

ඒ අනුව 2021 වර්ෂයේ අයවැය සම්මත වූ අයවැයක් සේම මා සලකනවායයි ගරු සභාපතිතුමා විසින් ප්‍රකාශ කරන ලදී.

ගරු මන්ත්‍රීවරුන් පිරිසක් අපි අයවැයට විරුද්ධයි යනුවෙන් ප්‍රකාශ කර අසුන් වලින් නැගීමට සිටින ලදී."

The Petitioner had thereafter made the following statement:²

"2021.12.28 වන දින ගරු සභාපතිතුමා විසින් සහ රැස්වීමේදී කරන ලද විශේෂ ප්‍රකාශය

2020 වූ නොවැම්බර් මස 20 වන දින ඉදිරිපත් කරන ලද අයවැය සංශෝධන සහිතව එදින සභාපති වන මා විසින් පිළිගන්නා ලදී. එසේ පිළිගත් හෙයින් 1987 අංක 15 දරණ ප්‍රාදේශීය සහ පනතට ප්‍රකාරව මෙම අයවැය දෙවන වර සභාගත කර සහ සම්මත කිරීමේ කිසිදු අවශ්‍යතාවයක් නෛතිකව නැති බවට මාහට නීති උපදෙස් ලැබී ඇත. තවද මේ සම්බන්ධයෙන් පළාත් සහ හා පළාත් පාලන කටයුතු රාජ්‍ය අමාත්‍යාංශය මගින් මා වෙත ලිපියක් ඉදිරිපත් කරමින් තව මෙය තව දුරටත් සනාථ කර ඇත. එම ලිපිය මා විසින් අද දින සහා ගත කරනු ලැබේ. එබැවින් පළවන වර ඉදිරිපත් කල 2021 වර්ෂය සඳහා වූ අයවැය සංශෝධන සමග සභාවේ යනා පරිදි සම්මත වූ අයවැයක් ලෙස සලකනු ලැබෙන බව මා ප්‍රකාශ කර සිටීම."

It is clear from 'X10' that even though the Petitioner has re-submitted the budget on 28th December 2020:

- a) The Petitioner has not provided the members of the Pradeshiya Sabha an opportunity of further considering the budget;
- b) The Petitioner has not called for a vote on the said amended budget;
- c) The budget has not been passed by the Pradeshiya Sabha.

¹ Vide page 19 of 'X10'.

² Vide page 19 of 'X10'.

Instead, the Petitioner had declared that the amended budget has been duly adopted.

The refusal of the Petitioner to act in terms of Section 169 and its proviso had triggered a series of events culminating in the filing of this application.

The first is a letter dated 31st December 2021 marked 'X14' sent to the Petitioner by the 24th Respondent, the Regional Assistant Commissioner of Local Government informing the Petitioner that he cannot incur any capital expenditure as there is no valid budget for 2021 due to the failure on the part of the Petitioner to have the budget passed by the Pradeshiya Sabha.

The second is an Order made in terms of Section 185(3) of the Act and published in Extraordinary Gazette No. 2209/73 dated 8th January 2021 by which the 22nd Respondent, the Governor of the Eastern Province had suspended the Petitioner from office. This Order had however been revoked by a further Order published in Extraordinary Gazette No. 2212/21 dated 27th January 2021.

The third is the following notice issued by the 22nd Respondent marked 'X18':³

"The Chairman of Padiyathalawa Pradeshiya Sabha within the Province of the East has submitted and failed to get adopted the Budget of the year 2021, as the power vested in him under Section 168 and 169 of the Pradeshiya Sabha Act No. 15 of 1987, thus the said Chairman of the said Pradeshiya Sabha , as provided under Section 17 of the Local Authorities (Special Provisions) Act, No. 21 of 2012, is deemed to have been resigned from the office of the Chairman effective from 31.12.2020 and that the office of the Chairman of that Pradeshiya Sabha become vacant effective from that date."

The fourth is a letter dated 29th January 2021 marked 'X19' issued by the 24th Respondent to the Secretary of the 1st Respondent informing that the Petitioner has ceased to hold office as Chairman of the 1st Respondent due to his failure to have the budget of the 1st Respondent for 2021 approved by 31st December 2020.

³ This notice, which has been published in Extraordinary Gazette No. 2212/23 dated 27th January 2021 has been issued in terms of Section 223 of the Act.

Aggrieved by the above decisions of the 22nd – 24th Respondents, the Petitioner filed this application seeking *inter alia* the following relief:

- (a) A Writ of Certiorari to quash the decision in 'X18', 'X19' and 'X20'⁴ that the Office of Chairman of the 1st Respondent has fallen vacant;
- (b) A Writ of Prohibition preventing the Respondents from taking steps on the basis that the Office of Chairman of the 1st Respondent has fallen vacant.

It is clear that 'X18', 'X19' and 'X20' have been issued due to the failure on the part of the Petitioner to have the budget passed by the Pradeshiya Sabha. In considering the legality of the decisions contained therein, the primary issue that arises for determination is whether the budget of the 1st Respondent has been passed in terms of the law, and if not, whether the Petitioner is deemed to have resigned from the office of Chairman as provided for by the proviso to Section 169 of the Act.

The principal argument of the learned President's Counsel for the Petitioner was that where the Chairman agrees with the amendments or modifications proposed by the members, the necessity for him to re-submit the amended budget does not arise. He therefore submitted that the factual circumstances of this application do not fall within the proviso to Section 169 and that the deeming provision that the Chairman has resigned too does not apply.

I shall now consider whether the Petitioner has complied with the several obligations cast on a Chairman by the Act with regard to the budget. The first obligation is to prepare the budget, which the Petitioner has complied with. The second is to submit the budget to the Pradeshiya Sabha, which too the Petitioner has complied with. The third obligation is to have the budget so submitted, passed by the Pradeshiya Sabha. As I have noted, the Petitioner has two opportunities to have the budget passed. The Petitioner has faltered at the first opportunity as a result of the budget being defeated on 20th November 2020.

⁴ 'X20' is the Sinhala translation of 'X19'.

The Petitioner was thereafter required to re-submit the budget for further consideration of the Pradeshiya Sabha. The Petitioner has partially complied with this obligation by re-submitting the budget on 21st December 2020. Having done so, the Petitioner has failed to afford the members of the Pradeshiya Sabha an opportunity of further considering the said budget. The Petitioner has also failed to have the budget passed by the Pradeshiya Sabha. As submitted by the learned Senior State Counsel for the 1st Respondent and the learned President's Counsel for the 4th -8th, 10th, 11th, 13th and 16th Respondents, the Petitioner has thrown all democratic norms out of the window.

It is not disputed that the concession granted by Section 169 to enable a Chairman of a Pradeshiya Sabha to function in office even where a duly submitted budget has not been passed by a majority comes to an end after two years of being elected as Chairman, and that the provisions contained in the proviso to Section 169 is applicable thereafter.

Once the budget is submitted to the Pradeshiya Sabha and debated and whatever the modifications or additions that a Chairman may agree during or after such debate, the budget must be submitted by the Chairman to the Pradeshiya Sabha for its **decision**. This is mandatory and is confirmed by the use of the word, '*decision*' in the proviso to Section 169. In terms of Section 14(1) read together with Section 14(2), a decision would mean a vote. I am therefore of the view that the Chairman *agreeing* to any modifications or additions that may be proposed by one or more or even all members does not suffice in order to claim that the budget has been passed. The claim that the Chairman *agreed* with the modifications and amendments and therefore the budget has been passed is a red herring. The budget must be passed by a majority vote if the Chairman wishes to avoid the deemed resignation being triggered.

Where the Chairman re-submits the budget, he must provide the members an opportunity of further considering it and thereafter he must have the budget passed by a majority vote of the Pradeshiya Sabha. In my view, the crux of the matter is that the Chairman must ensure that he has in place a budget duly passed by the Pradeshiya Sabha by the due date. If he fails in this regard at whatever point of the process, he is deemed to have resigned from the office of Chairman by operation of law. A Chairman who does not take a vote cannot be in a better position than a

Chairman who has re-submitted the budget and taken a vote, only to have the budget defeated by the Pradeshiya Sabha.

The Petitioner has failed in his obligation to have the budget passed in terms of Section 169 and therefore the consequence set out in the proviso to Section 169 has been triggered. The Petitioner is therefore deemed to have resigned from the office of Chairman of the 1st Respondent Pradeshiya Sabha. The result is that there is a vacancy in the office of Chairman. This in my view is what was intended by the legislature when it introduced the proviso to Section 169 in 2012. I am therefore unable to agree with the submission of the learned Counsel for the Petitioner that the factual circumstances of this application are outside the scope of the proviso to Section 169 of the Act.

The learned Counsel for the Petitioner submitted that in any event, the impugned notice 'X18' is *ultra vires* the powers conferred on the 1st Respondent by Section 223 of the Act and Section 2 of the Provincial Councils (Consequential Provisions) Act No. 12 of 1989. To me, the series of events that followed the refusal by the Petitioner to place the re-submitted budget to a vote and have it passed by the Pradeshiya Sabha reflects the desperation on the part of the Respondents to ensure that the provisions of Section 169 are complied with. Even if the argument of the learned Counsel for the Petitioner is accepted, nothing flows from 'X18' for the reason that 'X18' is only an intimation of a factual position that prevailed as at that date.

In the above circumstances, 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