

**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 under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No: 61/2021**

A.P. Ranasinghe Bandara,  
Chairman,  
Seruwila Pradeshiya Sabha,  
No. 85, New Town, Seruwila.

**PETITIONER**

Vs.

1. Anuradha Yahampath,  
Governor of Eastern Province.
2. Thusitha P. Wanigasinha,  
Chief Secretary of Eastern Province,  
Chief Secretary's Secretariat.
3. L.P. Madanayake,  
Secretary to the Governor.

1<sup>st</sup> and 3<sup>rd</sup> Respondents are at  
Governor's Secretariat, Lower Road,  
Orr's Hill, Trincomalee.

4. N. Manivanan,  
Commissioner of Local Government,  
Department of Local Government.
5. L.J.S.L. Tennakoon,  
Deputy Commissioner,  
Department of Local Government.

2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents are at  
Kanniya Road, Varothayanagar,  
Trincomalee.

6. K.W.A. Chandrakanthi,  
Vice Chairman, Seruwila Pradeshiya Sabha.

7. W.A. Jayasiri.
8. K.A. Kumarasena.
9. D.P.R. Devapriya.
10. B.K.N.S. Priyadarshana.
11. B.D.J. Pushpakumara.
12. G. Dammakanthi.
13. A.K. Anvar.
14. S.W. Wannigamudi.
15. V. Rasu.
16. W.W.W. Kumari.
17. D.R.H. Manike.
18. R.D.S.P. Ramanayake.
19. A.M. Ali.
20. M.G.A. Manel.

6<sup>th</sup> to 20<sup>th</sup> Respondents are members of the Pradeshiya Sabha of Seruwila.

### **RESPONDENTS**

- Before:** **Arjuna Obeyesekere, J / President of the Court of Appeal  
Mayadunne Corea, J**
- Counsel:** Farman Cassim, P.C., with Budwin Siriwardena, Mithun Imbulamure and Vinura Lasantha for the Petitioner
- Manohara Jayasinghe, Senior State Counsel for the 1<sup>st</sup> Respondent
- Sanjeeva Jayawardena, P.C., with Rukshan Senadheera for the 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> Respondents
- Ruwantha Cooray for the 7<sup>th</sup> and 11<sup>th</sup> Respondents
- Niran Anketell for the 13<sup>th</sup>, 14<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> Respondents
- Supported on:** 18<sup>th</sup> February 2021, 3<sup>rd</sup> March 2021, 25<sup>th</sup> March 2021 and 30<sup>th</sup> March 2021
- Written Submissions:** Tendered on behalf of the Petitioner on 19<sup>th</sup> April 2021
- Tendered on behalf of the 1<sup>st</sup> Respondent, 7<sup>th</sup> and 11<sup>th</sup> Respondents, and the 13<sup>th</sup>, 14<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> Respondents on 20<sup>th</sup> April 2021
- Decided on:** 10<sup>th</sup> 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 Seruwila Pradeshiya Sabha to have the budget of the said Pradeshiya Sabha for the year 2021 passed by the members of the said Pradeshiya Sabha (i.e. the 7<sup>th</sup> – 20<sup>th</sup> 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.

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, **pass** and adopt the budget is clearly established by Section 168.

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 and have the necessary finances to attend to the day to day operations and the vital developmental activities of the Pradeshiya 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.

I say this for the reason 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 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 period thereafter is that, in the latter period, if the Chairman fails to submit and have

the budget passed 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, which too must be taken by a vote of the members present at the meeting.

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 obligation of placing it before the Pradeshiya Sabha to have it passed by the members of the Pradeshiya Sabha is at all times with the Chairman – vide Section 169;
- d) The budget must be passed by the members of the Pradeshiya Sabha;
- e) 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;
- f) 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;
- g) After the first two years, the failure on the part of the Chairman to have the budget passed on either of 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 was elected a member of the Seruwila Pradeshiya Sabha as a candidate from the United National Party, together with 15 others at the Local Government elections held in February 2018. He states that no single party received a majority. The Petitioner, together with the support of those members elected from different political parties to that of the Petitioner had secured 10 votes and been elected as the Chairman.

The Petitioner states that he received eight proposals in response to a request made by him for all members of the Sabha to submit their suggestions for the budget for the year 2021. The Petitioner states further that he afforded all members an opportunity of making any recommendations relating to the budget at the meetings of the Sabha held on 16<sup>th</sup> September 2020 and 21<sup>st</sup> October 2020. The Petitioner claims that he incorporated all proposals that he had received and submitted a copy of the proposed draft budget to all members on 17<sup>th</sup> November 2020.

The Petitioner states that he submitted the draft budget to the Sabha at its meeting held on 25<sup>th</sup> November 2020, and that the matters contained therein were discussed amongst the members. It is borne out by the minutes of the meeting marked 'P10' that the Petitioner had agreed to incorporate the amendments that were proposed by the members. What transpired thereafter is relevant to the issue that has arisen in this application and is therefore re-produced below:<sup>1</sup>

**“ගරු ප්‍රාදේශීය සභා සභාපති – ඇරව්පොලේ ගෙදර රණසිංහ බණ්ඩා මහතා (U.N.P)**

සංවර්ධන යෝජනා ලබා ගැනීමට ලිපි යවා ඇති බවත් අයවැය කෙටුම්පත සති දෙකකට ප්‍රථම ලබාදුන් බවත් ගැටලුවක් තිබෙනවා නම් පවසන ලෙසත් ඔබ තුමාලා පැවසූ සංශෝධන සිදු කිරීමට ඩාරගත් බවත් නැවතත් අයවැය ලේඛනයෙහි ගැටලු තිබෙනවා නම් පවසන ලෙසත් වරදේද වීමට කරුණු තිබෙනවානම් පවසන ලෙස ඉල්ලා සිටින ලදී.

**ගරු ප්‍රාදේශීය සභා මන්ත්‍රී - බෝධිපක්ෂ කුරු අබේගෙදර නාලින්ද සම්පත් ප්‍රියදර්ශන මහතා (S.L.P.P)**

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<sup>1</sup> Vide pages 12 and 13 of 'P10'.



අයවැය ලේඛනයෙහි සියලුම දෑ සංශෝධනය කලයුතු බවත් එනිසා ඔබතුමා කුමන ආකාරයකින් සංශෝධනය කිරීමට කැමති වුවත් 2021 වර්ෂයේ අයවැය ලේඛනයට අප විරුද්ධ බව පවසන ලදී.

**ගරු ප්‍රාදේශීය සභා මන්ත්‍රී ජී වරසිංහ ආරච්චියේ පයසිරි මහතා (S.L.P.P)**

මෙම අයවැය ලේඛනය අද දින පටාපයට පත් කරන බවත් ඊළඟ අවස්ථාවේදී පවසන ලද සංශෝධන සිදු කරනව අයවැයක් ඉදිරිපත් කරන ලෙසත් සංශෝධන කර ඊළඟ සභා වාරයට අයවැය ඉදිරිපත් කරන ලෙස පවසන ලදී.

**ගරු ප්‍රාදේශීය සභා මන්ත්‍රී - දේවපුරයේ ප්‍රියන්ත රාණන් දේවප්‍රිය මහතා (S.L.P.P)**

අයවැය ලේඛනය සම්මත කිරීම එක් කරුණක් බවත් අයවැයට විරුද්ධ වම අනෙක් කරුණ බවත් සංශෝධන සහිතව අයවැය ලේඛනය සම්මත කිරීම තවත් කරුණක් බවත් සභාපතිතුමා මෙයින් තුන්වන කරුණට අපව කැමති කරවා ගැනීමට කටයුතු කරන බවත් අප එයට අකමැති බවත් මෙයට විරුද්ධ වන බවත් පවසන ලදී.

**ගරු ප්‍රාදේශීය සභා සභාපති - ඇරච්චොලේ ගෙදර රණසිංහ බණ්ඩා මහතා (U.N.P)**

2012 අංක 21 දරණ පළාත් පාලන ආයතන විශේෂ විධිවිධාන පනතේ විධිවිධාන වලට අනුව මා විසින් ඉදිරිපත් කරන ලද අංක 2021 අයවැය ලේඛනය සඳහා ඉදිරිපත් කරන ලද යෝජනා හා සංශෝධන සඳහා මා එකඟ වන අතර එම යෝජනා හා සංශෝධන සියල්ල පවතින නීතියට හා විෂය පථය තුළ ක්‍රියාත්මක කිරීමට එකඟ වෙමින් මෙම යෝජනා හා සංශෝධන සහිත මා විසින් ඉදිරිපත් කරන ලද 2021 අයවැය ලේඛනය සම්මත කරන ලදී යන්න ප්‍රකාශ කරමින් සභාවේ වැඩ කටයුතු අවසන් කරන ලදී.”

Thus, even though the Petitioner has submitted the budget on 25<sup>th</sup> November 2020, it is clear from ‘**P10**’ that the Petitioner has not taken a vote on the budget presented by him and instead declared that the budget has been passed by the Pradeshiya Sabha. The Petitioner has thereby denied the members of the Pradeshiya Sabha, the opportunity of deciding on the budget by majority vote, as required by Sections 14 and 169 of the Act.

The refusal of the Petitioner to act in terms of Section 169 and its proviso had triggered a series of correspondence between the Petitioner and the 3<sup>rd</sup> – 5<sup>th</sup> Respondents. I shall refer to these in brief as it explains the actions of the 1<sup>st</sup> – 5<sup>th</sup> Respondents.

By letter dated 27<sup>th</sup> November 2020 marked ‘**P12**’ the 4<sup>th</sup> Respondent, the Commissioner of Local Government, Eastern Province had informed the Secretary of

the Pradeshiya Sabha that he has received complaints that the Petitioner, together with the Secretary has acted in an arbitrary manner and declared the budget as having been passed without taking a vote. By his reply marked 'P12a', the Secretary had admitted that a vote was not taken.

The 4<sup>th</sup> Respondent by his letter dated 10<sup>th</sup> December 2020 marked 'P13' had once again drawn the attention of all local authorities in the Eastern Province to the requirement of having the budget passed by the Pradeshiya Sabha, and the consequence of not having the budget passed – i.e. the Chairman shall be deemed to have resigned from his post.

The position of the Petitioner is contained in a letter dated 21<sup>st</sup> December 2020 marked 'P14', where the Petitioner had informed the 4<sup>th</sup> Respondent that it is doubtful if a vote is required where he has agreed with the amendments proposed by the members. It is clear from 'P14' as well as from the minutes 'P10' that the Petitioner feared that the budget would be defeated if a vote was taken and hence his decision to refrain from taking a vote.

As the Petitioner had declined to act in terms of 'P13', the 4<sup>th</sup> Respondent had repeatedly requested the Petitioner to have the budget approved by the Pradeshiya Sabha by 31<sup>st</sup> December 2020 – vide letters dated 22<sup>nd</sup> December 2020 and 28<sup>th</sup> December 2020, marked 'P15' and 'P17', respectively. These requests too had been ignored by the Petitioner.

By letter dated 1<sup>st</sup> January 2021 marked 'P18a' the 5<sup>th</sup> Respondent,<sup>2</sup> the Assistant Commissioner of Local Government, Eastern Province had informed the Petitioner that he cannot incur any capital expenditure as there is no valid budget for 2021 arising from the failure on the part of the Petitioner to have the budget passed by the Pradeshiya Sabha. By letters dated 6<sup>th</sup> January 2021 and 8<sup>th</sup> January 2021 marked 'P19' and 'P20' respectively, the Petitioner had been directed to refrain from carrying out the functions of the office of Chairman of the Seruwila Pradeshiya Sabha.

By an Order made in terms of Section 185(3) of the Act and published in Extraordinary Gazette No. 2209/73 dated 8<sup>th</sup> January 2021, the 1<sup>st</sup> Respondent, the

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<sup>2</sup> 'P18a' is the Sinhala translation of 'P18'.

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 27<sup>th</sup> January 2021.

The 1<sup>st</sup> Respondent had thereafter issued the following notice marked 'P23':<sup>3</sup>

*“The Chairman of Seruwila 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.”*

'P23' has been followed by a notice marked 'P24'<sup>4</sup> issued by the 4<sup>th</sup> Respondent in terms of Section 66G of the Local Authorities Elections Ordinance, informing that a meeting of the Seruwila Pradeshiya Sabha will be held on 10<sup>th</sup> February 2021 to elect a Chairman to fill the vacancy created by the resignation of the Petitioner.

Aggrieved by the above decisions of the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents, the Petitioner filed this application seeking *inter alia* Writs of Certiorari to quash the decisions in 'P18', 'P18a', 'P19', 'P23' and 'P24'.

Although this matter was fixed for support for 9<sup>th</sup> February 2021, this Court was not able to take up this matter for support as the Respondents were absent and unrepresented on that date. However, in order to prevent this application from being rendered nugatory, this Court, by an order delivered on 10<sup>th</sup> February 2021, directed the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents to refrain from taking any steps in terms of Section 66G of the Local Authorities Elections Ordinance until this Court hears all parties.

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

<sup>4</sup> 'P24' has been published in Extraordinary Gazette No. 2212/55 dated 29<sup>th</sup> January 2021.

It is clear that '**P18**', '**P18a**', '**P19**', '**P23**' and '**P24**' have been issued due to the failure on the part of the Petitioner to have the budget passed by the members of the Seruwila Pradeshiya Sabha. In considering the legality of the decisions contained therein, the primary issue that must be considered is whether the budget of the 1<sup>st</sup> 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 learned President's Counsel for the Petitioner placed four arguments before this Court.

The first argument was that the Petitioner had agreed to all the amendments proposed by the members and that in such a situation, all what is required is for the budget of the Pradeshiya Sabha to be **adopted** by the Pradeshiya Sabha as opposed to being **passed** by the Pradeshiya Sabha. It was submitted that *there is a distinct difference between the meaning of the words, 'adopt' and 'pass' in as much as 'adopt' means to consent to and/or accept as a matter of course and 'pass' is to sanction by the requisite majority.* In support of his argument, the learned President's Counsel for the Petitioner has referred to the provisions of:

- a) Section 168(2) of the Act in terms of which *every Pradeshiya Sabha shall finally consider and adopt the budget;*
- b) Section 169 of the Act, which provides that the budget shall be deemed to be the duly adopted budget during the first two years notwithstanding that the budget has not been passed.

There is no dispute that the Petitioner submitted the budget to the Pradeshiya Sabha. It is equally clear that the Petitioner did not provide the members of the Sabha an opportunity to vote on the budget after the members very clearly stated that they would defeat the budget. Therefore, there is a failure on the part of the Petitioner to have all matters or questions authorized by the Act to be decided by a vote, as required by Section 14. Thus, even if the argument of the Petitioner is accepted that a vote is not required and that the members can adopt the budget without passing it, such a situation will apply only where all members have agreed to

the budget, without a division. That is not the case here and thus, on a best case scenario, the first argument of the Petitioner has no merit.

Furthermore, the said argument runs contrary to the provisions of the Act. I have already referred to the fact that the cumulative effect of Sections 168 and 169 is that the obligation to prepare the budget, submit the budget to the Pradeshiya Sabha and have the budget passed by the Pradeshiya Sabha is with the Chairman. This is an obligation that rests with the Chairman right throughout his period of office and is constant. Nowhere in the law does it allow the Chairman to make a unilateral decision on the budget. Section 14 of the Act specifies that a decision of the Pradeshiya Sabha shall be by a vote. Therefore, in my view, nothing short of a vote would be sufficient to pass the budget, whether it be in the first two years or in the next two years.

This is clearly recognized in Section 169 for the first two years, by the use of the words 'decision' and 'passed', as well as in the next two years by the use of the said words in the proviso to Section 169. The fact that a budget is *deemed to be the duly adopted budget* is a legal fiction introduced to allow the Chairman to continue in office in the first two years notwithstanding that he has not been able to get the budget passed. This application is within the proviso to Section 169 where no such deeming provision is available to assist the Petitioner. In my view, the Petitioner must either have the budget passed by a vote of the Pradeshiya Sabha or he must face the consequence of being deemed to have resigned from office.

In my view that the Petitioner *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 or to claim that the budget has been *adopted*. The claim that the Petitioner *agreed* with the modifications and amendments and therefore the budget has been *adopted* is a red herring. The budget must be passed by a majority vote if the Petitioner wishes to avoid the deemed resignation being triggered.

The crux of the matter is that the Petitioner 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 set out in the proviso to Section 169, 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.

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, after some members informed the Sabha that they would not vote in favour of the budget, the Petitioner refrained from putting the budget to a vote. Although the Petitioner had been repeatedly directed by the 4<sup>th</sup> and 5<sup>th</sup> Respondents to take a vote on the budget, he refrained from doing so and thereby has failed to have the budget passed by the Pradeshiya Sabha.

The result is twofold. The first is that the Seruwila Pradeshiya Sabha does not have a budget for 2021 which has been passed by its members. The second 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. As submitted by the learned Senior State Counsel for the 1<sup>st</sup> Respondent, the learned President's Counsel for the 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> Respondents and the learned Counsel for the 7<sup>th</sup> and 11<sup>th</sup> Respondents, the Petitioner has thrown all democratic norms out of the window and adopted a procedure not known to the law. I am therefore unable to agree with the submission of the learned President's Counsel for the Petitioner that the budget has been adopted by the Pradeshiya Sabha.

This brings me to the second argument of the learned President's Counsel for the Petitioner, which is that the impugned notice 'P23' is *ultra vires* the powers conferred on the 1<sup>st</sup> Respondent by Section 223 of the Act and Section 2 of the Provincial Councils (Consequential Provisions) Act No. 12 of 1989. To my mind, 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 'P23' for the reason that 'P23' is only an intimation of a factual position that prevailed as at that date.

The necessity for this Court to consider the third argument of the learned President's Counsel for the Petitioner that the Order 'P24' issued on 29<sup>th</sup> January 2021 is not in conformity with the provisions of Section 66G does not arise in view of the conclusion that I have reached that there exists a vacancy in the office of Chairman. Furthermore, the requirement that the next Chairman must be elected within six weeks of the vacancy is only directory as Section 66G does not contain any sanctions for not proceeding with the election within the said time period.

The final argument of the learned President's Counsel for the Petitioner was that the 1<sup>st</sup> Respondent cannot remove the Petitioner from office in terms of Section 185 of the Act due to the failure to adopt the budget. The necessity to consider the said argument does not arise as 'P21' has been revoked.

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**