

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

*In the matter of an application in terms of
Article 140 of the Constitution for mandates
in the nature of Writs of Certiorari and
Prohibition.*

Dissanayake Mudiyansele
Thotupale Gedara Ranasinghe Banda
"Sudarshana",
Udawatta,
Hanguranketha.

CA/WRIT/08/2022

Petitioner

Vs.

1. Lalith U. Gamage
Governor-Central Province,
Governor's Secretariat,
Maligawa Square,
Kandy.
2. H.M.M.U.B. Herath
Commissioner of Local
Government- Central Province,
Central Provincial Council,
Provincial Council Complex,
Palleke,
Kundasale.
3. Y.P. Wijewardana,
Assistant Commissioner of Local
Government- Nuwara Eliya
District,
Office of the Local Government
Assistant Commissioner,
Bambarakelle,
Nuwara Eliya.
4. Gamini Rajarathna
Chief Secretary-Central Province,
Central Provincial Council,

Provincial Council Complex,
Palleke,
Kundasale.

5. Hanguranketha Pradeshiya Sabha
Hanguranketha.
6. C.P.M. Dinapurna
Secretary- Hanguranketha
Pradeshiya Sabha,
Hanguranketha Pradeshiya Sabha
Hanguranketha.
7. Lakshman K.V. Balasuriya
Vice Chairman- Hanguranketha
Pradeshiya Sabha,
Hanguranketha,
Nuwara Eliya.
8. I.M.K.B. Ilangathilaka
Kotuwegedara road,
Hanguranketha.
9. A.W.D.T.S.I. Karunarathna
Poramadulla,
Rikillagaskada.
10. H.M. Anurasinghahitihamu
Torontonkota,
Rikillagaskada.
11. D.M. Suranga Dissanayake
No. 54, Damunumaya,
Hanguranketha.
12. D.M.S.K.B. Dasanayake
Kottala Mahagedara,
Madanwala,
Hanguranketha.
13. Wadugewickramasinghe
Godailukwewa,
Rikillagaskada.
14. A.A. Ajith Ariyathna
Digalahinna,
Elamulla.
15. R.M.D.L.B. Rathnayake
Akiriya Road,

Poramadulla,
Rikillagaskada

16. R. Thyagarajah
Rahathungoda,
Hewaheta.
17. P.A. Janaka Perumbularachchi
No. 96, Boralassa Road,
Damunumaaya,
Hanguranketha.
18. T.M.N.G. Gunasinhabanda
Daawagoda,
Adikarigama.
19. W.M. Sumith Priyadarshan
No. 20, Mile Post,
Kandy Road,
Rikillagaskada.
20. D.M.P.G. Lakshman Dissanayake
No. 28/1, Walikada,
Adikarigama.
21. A.M. Kusal Dananjaya Abeykoon
No. 71/1, Malulla,
Godan thenna.
22. P.G. Duminda
No. 146, Unnathenna,
Hanguranketha.
23. K.H.G. Chandana Amarathunga
Moragalla, Illagolla.
24. Y.M. Bandula Yapa
No. 145, Udamakuruppa,
Rikillagaskada.
25. R.M.R.S. Dissanayake
Jayanth,
Poramadulla,
Rikilla.
26. W.M.G.T. Sujith Wijekoon
Thakshila,
Poramadulla,
Rikillagaskada.

27. D.L. Suncetha Liyanage
Tharanwela, Bambaragama,
Pallebowala.
28. W.M.H.J. Nilmini Rajanayake
Hindagoda-Gedara, Bowala,
Pallebowala.
29. R.M.R. Rathnayake
Madumana,
Hewaheta.
30. W.M.G.G. Anurabandara
Hindiyala,
Padiya palaasasaing.
31. T. Sadanandan
Hopewatta, Udakotasa,
Hewaheta.
32. N.G.H. Anura Bandara
Ehelagasthenna,
Maturata.
33. T. Udayakumar
No. 277, Gonapitiyawatta,
Kadapola.
34. W.M. Pabawathimanike
R.134, Mandaramnuwara.
35. A.P.R.M. Somawathie
Suriya Niwasa,
Waraakalawita,
Hadawalapitiya.
36. N.G. Sobha Chitrangani
Rajapaksha
Pethagepitiya,
Pallebowala.
37. W.G. Chaminda Lalkumara
No. 193/21.
Godigamuwa.
Elamulla.
38. G.G.P.P. Alahakoon
Hiyadala,
Padiyapalalla.

39. I.K. Sarathchandra
234/A, Goodwood Janapadaya,
Mandaramnuwara.
40. L. Lasanthi Wickramasinghe
No. 18, Welikada,
Adhikarigama.
41. D.K.G. Jayawardena
No. 364, Dampala,
Hanguranketha.
42. S. Kamaladasan
Mada Kotasa,
Muloyawatta,
Hewathenna.
43. H.W. Thilkawathie
Hakmana Walawwa,
Bogamuwa,
Rikillagaskada.
44. D.V.G. Charlotte
Hapugasdeniya,
Akiriya.
45. M.G. Wimal Ariyakumara
Kaluaththanagalla,
Karadagolla.
46. G.G.H.P. Kusumsiri
No. 192/1, Madumana,
Hewahata.
47. I.M. Wajira Lasantha Ilangathilaka
No. 330, Wewa Road,
Hanguranketha.
48. A.G. Tikiribanda
Matibambiya,
Elamulla.

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Respondents

Counsel : Faizer Mustapha PC with Tharaka Nanayakkara and Dananjaya Perera for the Petitioner

Monahara Jayasinghe, SSC for the 1st to 4th Respondents

Romesh Pathirana for the 5th & 6th Respondents

P. B Hearth for the 7th to 15th, 19th, 20th, 22nd to 25th, 27th to 36th, 38th to 46th & 48th Respondents

Supported on: 17.02.2022

Written submissions: tendered on behalf of Petitioners: 21.02.2022

tendered on behalf of the 1st to 4th Respondents: 21.02.2022

tendered on behalf of the 5th and 6th Respondents: 21.02.2022

tendered on behalf of the 7th to 15th, 19th, 20th, 22nd to 25th, 27th to 36th, 38th to 46th & 48th Respondents: 21.02.2022

Decided on: 28.02.2022

Sobhitha Rajakaruna J.

The Petitioner was elected a member of the Hangu ranketha Pradeshiya Sabha ("Pradeshiya Sabha") in the Nuwara Eliya District at the Local Government Elections held in 2018 and was elected as the Chairman of the said Pradeshiya Sabha by its members. The Petitioner was required to submit a budget for the succeeding year i.e., year 2022 ('budget') in terms of the Pradeshiya Sabhas Act No. 15 of 1987, as amended ('the Act'). The issues emanating in this application revolves around the said budget.

Facts in this case are very much similar to the case of Kadawatha Sathara and Gangawata Korale Pradeshiya Sabha bearing no. CA/Writ/27/2022 in which the Governor of the Central Province had declared that the Chairman of the Pradeshiya Sabha is considered to resign from the post of Chairman due to failure to pass the budget prepared by the said Chairman.

In the instant application also the learned Counsel for several Respondents took the same line of argument as advanced in the other connected cases. The Respondents contended that the questions relating to this case have already been resolved by His Lordship Justice Arjuna Obeyesekere with the agreement of His Lordship Justice Mayadunne Corea in four separate cases of this Court. i.e., CA/Writ/24/2021, CA/Writ/51/2021, CA/Writ/57/2021 & CA/Writ/61/2021. Accordingly, the relevant Respondents moved that this application be dismissed in *limine*.

Thus, it is necessary to ascertain in this case also whether the Petitioner has submitted a case which is suitable for full investigation and a hearing after issuing notice on all the Respondents. In the backdrop of the above orders made by this Court and upon the circumstances, the Court should be satisfied that there is a *prima facie* case that ought to be resolved after full argument.

The Petitioner on 19.11.2021 circulated a draft budget among the members of the Pradeshiya Sabha ('Members') requesting them to submit any proposals on or before 06.12.2021. Accordingly, couple of Members forwarded their proposals. A special meeting was held on 16.12.2021 at which the budget was tabled by the Petitioner along with the new amendments proposed.

Since three proposals out of the four were regarding a similar matter, the Petitioner accepted the same and the remaining proposal was withdrawn. Subsequently the Petitioner declared the budget as duly adopted by the Members. Thereafter, certain Members called for a division. Hence, a vote was allowed and the Petitioner however, intimated to Members that a division would not affect the budget as the Petitioner had already accepted all proposed amendments. Finally, the budget was defeated by a majority. (33 voted against and 1 member voted in favour of the budget)

The Petitioner on 17.12.2021 by virtue of his letter marked "P7", informed the 2nd Respondent that the budget had been duly adopted as per section 168(2) of the Act by having agreed to all proposals submitted by the Members. In response to "P7", the 2nd Respondent by letter dated 27.12.2021, marked 'P10', informed the Petitioner to comply and take steps in compliance with the orders in cases bearing Nos. CA/Writ/24/2021 and CA/Writ/51/2021 of this Court and also to re-submit the budget for a vote as the budget had been defeated by a majority.

However, the Petitioner without re-submitting the budget informed the 2nd Respondent that the budget prepared by him has been duly adopted on the alleged basis that all the amendments made to the budget were accepted.

The 2nd Respondent based on such circumstances has issued the Gazette Notification No. 2261/3 dated 03.01.2022 marked 'P13' declaring that the Petitioner is considered to have resigned from the post of Chairman with effect from 31.12.2021 and the post of Chairman is considered to be vacant since that date due to failure to pass the budget prepared by the Petitioner under section 168 & 169 of the Act and also on non-compliance with the said section 169.

The budget which was tabled on 16.12.2021 by the Petitioner was for the year 2022 and that was for a period after two years since the commencement of the term of office of the Hanguranketha Pradeshiya Sabha.

The initial questions which arise in this application is also similar to the case bearing No. CA/Writ/27/2022 and such questions are as follows;

- i. whether the Petitioner is entitled to declare the budget which was defeated by a majority as duly adopted under section 169 of the Act based on the alleged reason that he had accepted the amendments proposed by Members,
- ii. whether the Petitioner is deemed to have resigned from the office of Chairman as he failed to re-submit the budget for a vote after it was defeated.

I have already dealt with and determined similar questions relating to this application in;

- a) Madampage Nanda Wijeratne Silva vs. Marshal of the Airforce Roshan Goonetilleke Governor-Western Province & others (CA/Writ/649/2021, decided on 28.02.2022)*
- b) Kasudeen Mohomed Nihar vs. Anuradha Yahampath Governor- Eastern Province & others (CA/Writ/12/2022, decided on 28.02.2022)*
- c) J. Thilekeratne vs. Hon. M. Herath, Governor-North Central Province & others (CA/Writ/31/2022, decided on 28.02.2022)*

I have extensively considered the submissions made on behalf of the Petitioner as well as the submissions on behalf of the Respondents which are identical to the view point taken by the Respondents in all above three cases. I hold that the reasoning given by me to arrive

at the conclusion in above three cases are applicable in relation to the questions in the instance application also.

I need to reiterate in this application also that my findings in the above three cases were mainly based on the precedent established by His Lordship Justice Arjuna Obeyesekere with agreement of His Lordship Justice Mayadunne Corea in the below mentioned cases;

- a) Wellawattage Sarath Peiris vs. Katunayake Seeduwa Urban Council, Seeduwa & others (CA/Writ/24/2021, decided on 10.06.2021),***
- b) Manodara Aacharige Chaminda Sugath, Chairman vs. Anuradha Yahampath, Governor, Eastern Province & others (CA/Writ/51/2021, decided on 10.06.2021).***
- c) H.M. Lalantha Sumith Seneviratne vs. Pradeshiya Sabhawa of Padiyathalawa & others (CA/Writ/57/2021, decided on 10.06.2021)***
- d) A.P. Ranasinghe Bandara, Chairman vs. Anuradha Yahampath, Governor of Eastern Province & others (CA/Writ/61/2021, decided on 10.06.2021).***

In my order in CA/Writ/31/2021, I have summarized the precedent in the above four cases as follows;

- i. In terms of section 168 (2) of the Act, the budget shall be passed by the Council.
- ii. However, in terms of section 169, the budget submitted by the Chairman during the first two years of the Council shall be considered as the duly adopted budget, by operation of law, even though the said budget has not been passed by a majority vote. Moreover, taking a vote even during the first two years is essential.
- iii. After the first two years of the Council, the budget at the first submission or at the re-submission should be passed by majority votes of the Council.
- iv. It is a mandatory duty of the Chairman to submit the annual budget and if the budget is defeated at the first submission, the chairman must re-submit the budget, for a vote by the Members of the Council.
- v. In the event the budget is defeated any time after the first two years and as a result, if the Chairman of the Pradeshiya Sabha;
 - a) fails to re-submit the budget and/or
 - b) fails to get it passed upon re-submission to the Council,

the relevant Chairman is deemed to have vacated his post in terms of the proviso to section 169.

- vi. Even if the Chairman accepts the amendments, modifications, additions to the budget or to the supplementary budget, the Chairman is subjected to above cardinal requirements.

Additionally, it is important to reiterate the following passage in my order dated 28.02.2022 in CA/Writ/31/2022;

“Moreover, the rationale of the decision of the Court in all the above cases in addition to the provision of the said sections 168 & 169 is based on section 14 (1) of the Act. I also have observed in my order in CA/Writ/649/2021, the deeming provisions of section 169 of the Act should be carefully interpreted in line with the basic principles of Democracy and Good Governance without undermining the consent or the division of the Members of the Pradeshiya Sabha. “

Now, I advert to the reliefs sought by the Petitioner in this application. The Petitioner has prayed for in the prayer of the Petition *inter alia* for a mandate in the nature of a writ of Certiorari quashing the Gazette Notification bearing No. 2261/3 dated 03.01.2022 marked ‘P13’ issued by the 1st Respondent and the letter dated 06.01.2022 marked ‘P15’ issued by the 2nd Respondent. The 1st Respondent by the said Gazette Notification ‘P13’ has declared that the Petitioner is deemed to have resigned from the post of Chairman as the budget submitted by the said Chairman has not been passed in terms of section 168 of the Act and that the Petitioner has failed to act in terms of the proviso to section 169 of the Act.

On a careful consideration of the whole matter and in light of the reasoning given in my above orders (CA/Writ/649/2021, CA/Writ/12/2022, CA/Writ/31/2022) and in view of the legal analysis established in the cases bearing Nos. CA/Writ/24/2021, CA/Writ/51/2021, CA/Writ/57/2021 and CA/Writ/61/2021, I take the view that the 1st Respondent Governor has given due effect to the provisions of sections 14, 168 and 169 of the Act and lawfully decided that the Petitioner has deemed to have resigned from the office of Chairman.

In the circumstances, I am of the view that the questions raised by the Petitioner in the instant application have already been resolved in the aforesaid orders of this Court. Therefore, based on the arguability principles that should be adopted in respect of matters relating to issuance of notice in a juridical review application, I arrive at the conclusion that there is no arguable case or a prima facie case for this Court to issue formal notice on the Respondents in this application. Therefore, I proceed to refuse this application.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal