

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

Subash Yatawara
383/A, Talathu Oya Road,
Ampitiya.

CA/WRIT/27/2022

Petitioner

Vs.

1. Lalith U. Gamage
The Governor,
Governor's Office,
Central Province,
Kandy.
2. H.M.M.U.B. Herath
The Commissioner,
Local Government,
Provincial Council,
Central Province,
Pallekele, Kandy.
3. T.B.N.S. Bulathge
The Assistant Commissioner,
Local Government,
Central Province,
Provincial Council,
Pallekele.
4. Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya,
Kandy.

5. I.M.S.K. Mahinda Idisuriya
The Secretary,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
6. M.R.D. Fernando
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
7. D.A. Dharmasene,
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
8. W.G.U.Senadhira
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
9. G.L.R. Chamika
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
10. G.H.W.G.C. Karunaratne
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
11. H.A.S. Kumrihami,
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.

12. R.A.S.S. Kumara
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
13. R.J.K. Nanayakkara
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
14. W.G.L. Dias
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
15. V.W.G.N. Bandare
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
16. U.G.G.P.N. Kumari
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
17. Y.K.U. Peiris
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
18. D.M.G.C. Meegaswatta
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.
19. B.M.P.K. Jayasinghe

Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.

20. E.G.D.L. Mrasinghe
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.

21. S.P.S. Senadhire
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.

22. K.J. Eriyagama
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.

23. G.A.R. Perera
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.

24. T.M.P.M. Bandare
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.

25. V.G. Podi Appuhami
Member,
Kadawath Sathara and Gangawata
Korale Pradeshiya Sabha,
Thalathuoya Road, Ampitiya.

26. Hon. Attorney General,
Attorney Generals Department,
Colombo 12.

Respondents

Before : Sobhitha Rajakaruna, J.

Dhammika Ganepola, J.

Counsel : Channa Galappaththige with Lahiru Galappaththige, Kaushala Karunaratne and S.A.D.T. Suriyaarachchi for the Petitioner

Vikum de Abrew ASG. PC with Madubashini Sri Meththa, SC for the 1st to 3rd and 26th Respondents

Bharatha Abeynayake for the 4th and 5th Respondents

P.B. Herath for the 6th, 7th, 9th to 15th and 19th, 20th, 22nd and 25th Respondents

Supported on: 03.02.2022

Written submissions:- tendered on behalf of the Petitioner: 08.02.2022

- tendered on behalf of the 1st to 3rd and 26th
Respondents: 15.02.2022

- tendered on behalf of the 4th and 5th Respondents: 10.02.2022

- tendered on behalf of the 6th, 7th, 9th to 15th, 19th, 20th, 22nd and
25th Respondents: 11.02.2022

Decided on: 28.02.2022

Sobhitha Rajakaruna J.

The Petitioner was elected a member of the Kadawath Sathara and Gangawata Korale Pradeshiya Sabha ('Pradeshiya Sabha') in the Kandy District consequent to 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 issue that emerges in this application revolves around the said budget.

Facts in this case are very much similar to the case of Hanguranketha Pradeshiya Sabha bearing no. CA Writ 08/2022 in which the Governor of the Central Province declared that the Chairman of the Pradeshiya Sabha is considered to have resigned from the post of Chairman due to failure to pass the budget prepared by the said Chairman.

The learned Counsel who represented several Respondents in this case, taking the same argument as in other connected cases asserted that the questions relating to this application have already been resolved by His Lordship Justice Arjuna Obeyesekere with the agreement of the 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 and CA Writ 61/2021. Accordingly, the relevant Respondents moved that this application be dismissed in *limine*.

In the circumstances, it is necessary in this case also, to ascertain 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 20.07.2021 requested the members of the Pradeshiya Sabha ('Members') to attend a meeting to discuss the draft budget. Later, he requested the Members to submit their views and suggestions in that regard in writing. Many proposals were submitted and all of them were incorporated to the proposed budget. Consequently, Special Meeting was held on 02.12.2021 at which the Petitioner tabled the budget. The Petitioner agreeing with three proposals made by certain Members allowed the Members of the Pradeshiya Sabha to adopt them after vote. Two of the three proposals were passed by majority and those were incorporated in to the budget. On the basis that no objections were made against the budget, the Petitioner proceeded to declare the budget as adopted by the Members.

Subsequently, a division was requested on the budget. The Petitioner expressing that the division would not affect the budget, as the Members had accepted all proposed amendments and however, allowed a vote to take place. As a result, 12 members voted

against and 1 member voted for the budget and 7 members did not vote. The 2nd Respondent on 20.12.2021 informed the Petitioner to act in accordance with section 168 and 169 of the Act as the Petitioner failed to get the budget passed by the Council.

The 1st Respondent based on the failure of the Petitioner to get the budget passed by a majority vote has issued the Gazette Notification No. 2261/3 dated 03.01.2022 marked 'P-1' 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 and the proviso to section 169 of the Act and also on non-compliance with the said section 169. The 2nd Respondent on 18.01.2022 summoned a meeting to appoint a new Chairman. Subsequently, the 7th respondent was elected and appointed as the new Chairman.

The budget which was submitted to Council on 02.12.2021 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 Kadawath Sathara and Gangawata Korale Pradeshiya Sabha. The initial question which arises in this application is whether the Petitioner is entitled to declare the budget which was defeated by a majority as a duly adopted budget under section 169 of the Act due to the alleged reason that he had accepted the amendments proposed. The other question which arises is 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 viewpoint 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.

My findings in the above three cases were mainly based on the precedent established by His Lordship Justice Arjuna Obeyesekere with the 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 of the Act, 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.”

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 ‘P-1’ issued by the 1st Respondent and the decision of the 2nd Respondent declaring the appointment and election of the 7th Respondent as the new Chairman. The 1st Respondent by the said Gazette Notification P-1 has declared that the Petitioner is deemed to have resigned from the post of Chairman as the budget submitted by the said Petitioner 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, Writ 31/2022 & CA Writ 32/2022) & also 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