

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

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

CA/WRIT/32/2022

W.M.C.U. Wijerathne
Thiripankadawala,
Horowpathana.

Petitioner

Vs.

1. M. Herath
Governor of North Central Province,
Governor's Office North Central
Province.
2. S. Ekanayake
Secretary to the Governor of North
Central Province,
Governor's Office North Central
Province.
3. L. J. M. G. C. Bandara
Chief Secretary of North Central
Province,
North Central Provincial Council
Complex,
4th Floor B, Harischandra Mawatha,
Anuradhapura.
4. N.H.R. Nishantha
Commissioner of Local

Government,
Department of Local Government
North Central Province,
Provincial Council Complex,
Darmapala Mawatha,
Anuradhapura.

5. R. Jaythissa
Vice Chairman of Horowpathana,
Pradeshiya Sabha.
6. K.S.R.S. Kathrithiarachi
7. K.T. Kumarasinghe
8. P. Dayarathne
9. L. Milnawathi
10. K.S.M. Rizwan
11. M.K.W.M. Sunethra
12. N.M. Faizal
13. Y.M.B.A.S. Jayathissa
14. N.K. Hetiarachi
15. H.M. Dilshan
16. M.A.S. Madapatha
17. H.M.A. Abeyrathne
18. G.S. Gunaseakara
19. S.M. Ali

20. M. Malika

21. U.K.A.P. Senadeera

22. Ven. B. Sanganada

5th to 23rd Respondents being the member of
the Horowpathana Pradeshiya Sabha

All of them,
Horowpathana Pradeshiya Sabha.

23. H.A.R. Amaranayake
Secretary, Horowpathana Pradeshiya
Sabha.

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Farman Cassim PC with Budwin Siriwardana for the Petitioner

Nilshantha Sirimanne with Irusha Kalidasa, Uween Jayasinghe and Deshara
Goonetillekke for the 1st Respondent.

Sumathi Dharamawardana PC, ASG with Monahara Jayasinghe, SSC for 2nd,
3rd and 4th Respondents

Ruwantha Cooray for the 6th Respondent.

Sanjeeva Jayawardana PC with Rukshan Senadheera for the 24th Respondent.

Supported on: 08.02.2022

Written submissions: tendered on behalf of the Petitioner : 17.02.2022

tendered on behalf of the 1st Respondent : 17.02.2022

tendered on behalf of the 2nd, 3rd and 4th Respondents : 18.02.2022

tendered on behalf of the 6th Respondents : 22.02.2022

tendered on behalf of the 24th Respondent : 21.02.2022

Decided on: 28.02.2022

Sobhitha Rajakaruna J.

The Petitioner was elected a member of the Horowpathana Pradeshiya Sabha ('Pradeshiya Sabha') consequent to the Local Government Elections held in February 2019 and he was elected as the Chairman of the Council at its first meeting. 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 Kahatagasdigiliya Pradeshiya Sabha bearing no. CA/Writ/31/2022 in which the Governor of the North Central Province had declared that the Chairman of the Pradeshiya Sabha is considered to resign from the post of Chiarman 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 arguments as in other connected cases contended 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, in this case also, it is necessary 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 in this application on 29.11.2021 tabled the draft budget for the year 2022 incorporating the proposals of the members of the Pradeshiya Sabha ('Members') who requested a vote regarding the discussion of the draft budget. The motion to discuss the budget has been defeated and consequently the Petitioner has requested the Members to submit amendments or modifications to the draft budget. Meantime, the Petitioner has been informed, by virtue of letter marked P14 (dated 13.12.2021), by the 4th Respondent *inter alia* to comply and take steps in compliance with the order in the case bearing No. CA/Writ/61/2021 of this Court. Thereafter the budget was submitted on 16.12.2021 and 8 members including the Chairman expressed views in favour of the budget and 10 members expressed views against the budget. Significantly no vote has been taken on the budget on that day. Subsequently, the Petitioner without even re-submitting the budget informed the 4th Respondent that the budget prepared by him has been duly adopted on 16.12.2021 on the alleged basis that there were no amendments made to the budget.

The 1st Respondent based on such circumstances has issued the Gazette Notification No. 2263/7 dated 19.01.2022 marked 'P18' 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 in terms of section 168 & 169 of the Act and also on non-compliance with the said section 169.

The budget which was submitted to Council 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 Horowpathana Pradeshiya Sabha. The initial question which arises in this application also is whether the Petitioner is entitled to have the benefit of the deeming provision in the first portion of the section 169 of the Act even after two years from the commencement of the term of office of the Council. The other question which arises is whether the Petitioner is entitled to any concessions under section 169 of the Act in an event he has failed to submit the budget for a vote at the first submission and even failed to re-submit.

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 learned Counsel for 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 instant application also.

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 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. 2263/7 dated 19.01.2022 marked ‘P18’ issued by the 1st Respondent and the letter dated 20.01.2022 marked ‘P19’ issued as a consequent to ‘P18’ by the 4th Respondent.

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 and 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 above 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 refuse this application.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal