

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/31/2022

J. Thilekeratne
Gammadha,
Kahatagasdigiya

Petitioner

Vs.

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

Government,
Darmapala Mawatha,
Anuradhapura.

5. A. M. Najeem
Vice Chairman,
Pradeshiya Sabha Kahatagasdigiya.
6. P.R. Inoka Priyadharshani
Secretary,
Pradeshiya Sabha Kahatagasdigiya.
7. K.B. Samantha Kumara Shanthapriya
Member.
8. Ashoka Chaminda Meththasena
Member.
9. T.M. Mahinda
Member.
10. K.W.M.S. Weerakoon
Member.
11. G. Madhushanka Dissanayaka
Member.
12. P. Jeewan Pushpa Kumara Piyarathne
Member.
13. Nimesha Dilrukshi Wadimunu
Member.
14. K. Chandra Harshani Kumari
Member.
15. R.S. Violet Dammika Pemasiri
Member.
16. A.H. Neil Indika Herath
Member.
17. B. Wickramasiri
Member.

18. N.M. Saheedu
Member.

19. R.A. Nandana Rajapaksha
Member.

20. R.M. Pradeepa Chathurani
Subasinghe
Member.

21. H.M. Janaka Bandara Herath
Member.

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 an Deshara
Goonetillekke for the 1st Respondent.

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

Sanjeeva Jayawardana PC with Rukshan Senadheera for the 6th
Respondent.

Ruwantha Cooray for the 10th 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 & 4th Respondents :18.02.2022

tendered on behalf of the 6th Respondent :21.02.2022

tendered on behalf of the 10th Respondent :22.02.2022

Decided on: 28.02.2022

Sobhitha Rajakaruna J.

The Petitioner was elected a member of the Kahatagasdigiliya Pradeshiya Sabha consequent to the Local Government Elections held in February 2019 and he was elected as the Chairman in terms of section 66E(3) of the Local Authorities Elections Ordinance No. 53 of 1946 (as amended). 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.

In this application, the Petitioner seeks, *inter alia*, for orders in the nature of writs of Certiorari;

- a) quashing the Gazette Notification issued in relation to the Petitioner's alleged resignation from office;
- b) quashing the letter and subsequent decisions made in respect of naming a new Chairman to the Pradeshiya Sabha.

The sequence of salient events relevant to this application

The sequence of relevant events derived from the pleadings and laid down in the following manner due to the special circumstances of this case.

Date	Events
21.04.2021	Petitioner requested 5 th to 21 st Respondents, the members of the Kahatagasdigiliya Pradeshiya Sabha ('Members') to tender any suggestions for the budget before 01.06.2021. (<i>Vide</i> - 'P6')
01.10.2021	Petitioner requested the Members to further submit proposals relevant to their divisions for the budget, before 13.10.2021.
26.11.2021	Monthly General meeting of the Council was held. According to the agenda several proposals had been submitted by the Members. Petitioner proposed to take up the draft budget for discussion.

- 13.12.2021 The Petitioner was informed by the letter dated 13.12.2021 of the 4th Respondent that the decisions with regard to the budget should be taken in compliance with the order in the case bearing No. CA/Writ/61/2021.
- 14.12.2021 Special Meeting of the Pradeshiya Sabha was held. (*Vide* - 'P11')
The draft budget was tabled by the Petitioner.
7 Members including the Chairman expressed views in favour of the budget and 10 Members expressed views against the budget.
No vote was taken to get the budget duly passed.
The Petitioner declared that the budget has been duly adopted on the basis of the alleged consent of the Members.
- 14.12.2021 A request was made to the Petitioner by 9 Members to conduct an investigation and also to hold another special meeting in view of approving the budget since the majority of Members expressed views against the said budget. They have further stated that they had requested a division. (*Vide* - 'P14')
- 17.12.2021 In response to 'P14', the Petitioner intimated that there was no requirement to hold another special meeting since the budget had already been allegedly passed by that time and it cannot be re-submitted for approval. (*Vide* - 'P15')
- The Petitioner was informed by the 4th Respondent to adhere expeditiously to the instructions already given in his letter dated 13.12.2021 and particularly to comply with the guidelines in the order of case No. CA/Writ/61/2021. (*Vide* - 'P16-annexures')
- 24.12.2021 The Petitioner informed the 4th Respondent that there is no provision in law to summon a meeting to pass a budget which had already been duly passed by the Council.
- 30.12.2021 A General Meeting was held. (*Vide* - 'P17')
- The Members disagreed to pass the meeting minutes of the special meeting held on 14.12.2021 as a vote was not taken by the Petitioner to adopt the budget.
Members argued over the re-submission of the budget. Petitioner asserted such cannot be entertained since the budget has already been

- passed. As a result, few members interrupted the proceedings of the meeting. Therefore, the meeting was adjourned.
- 11.01.2022 Monthly General Meeting was held.
No vote was taken to adopt the budget.
- 19.01.2022 1st Respondent-Governor published a Gazette Notification bearing No. 2263/7 dated 19.01.2022 declaring that the Petitioner is considered to have resigned from post with effect from 31.12.2021 due to the failure to get the budget passed in terms of sections 168 and 169 of the Act and as such the post of Chairman is considered to be vacant. (*Vide* - 'P20')
- 20.01.2022 The 4th Respondent informed the Petitioner that he had been removed from the post of Chairman by virtue of the Gazette Notification bearing No. 2263/7 dated 19.01.2022 and also a meeting had been scheduled to be held on the 27.01.2022 at 1.00pm to appoint a new Chairman to the Pradeshiya Sabha. (*Vide* - 'P21').
- 27.01.2022 The special meeting was held.
The Members voted and elected the 10th Respondent as the new Chairman of the Pradeshiya Sabha.

The concise argument of the Petitioner.

- i. At the Pradeshiya Sabha meeting held on the 14.12.2021, the draft budget was allegedly approved and passed under and in terms of the Act.
- ii. Since the concluding remarks of the Minutes of the meeting held on 14.12.2021 evince that all suggestions and/or proposals and or/amendments with regard to the budget had been incorporated; thereby the budget for 2022 has been successfully adopted.
- iii. The words 'passed' and 'adopted' are both used in section 169 of the Act and therefore even if the budget is not passed by a majority of votes, it is deemed to be 'adopted'.
- iv. The matter of 'passing' the budget in terms of the proviso is only applicable when the Chairman does not agree to the modification, rejections or additions of all or any of the items in the budget; otherwise, the budget is deemed to have been 'adopted' in terms of the original section 169 of the Act.
- v. In terms of section 185(1) of the Act, a failure to adopt the budget is not a ground upon which the Chairman of a Pradeshiya Sabha could be removed by the

Governor. Therefore the 1st Respondent does not have the power under the Act to declare that the office of the Chairman has fallen vacant.

- vi. The section 223 of the Act is a transitional provision; therefore, it does not provide the 1st Respondent power to make orders in terms of the Act; thereby the order made by the Gazette Notification marked 'P20' is illegal and/or unlawful and/or ultra vires.
- vii. The actions of the 1st Respondent-Governor are tainted with mala fides and/or malice and/or with an ulterior political agenda acting illegally and/or unlawfully in violation of the statute and therefore ultra vires.
- viii. The 1st and 4th Respondents are acting in collusion to propagate an ulterior political agenda to appoint a new Chairman since no notice has been sent by the Kahatagsdigiliya Pradeshiya Sabha to the said Respondents stating that there is a vacancy for the position of the Chairman in terms of section 66G of the Local Authorities Elections Ordinance No. 53 of 1946.
- ix. In any event, when a Chairman of Pradeshiya Sabha is "deemed to have resigned" under or in terms of section 169 of the Act, such post can only be filled in terms of the procedure mentioned in section 66B (4) of Local Authorities Elections Ordinance No. 53 of 1946. Further, the filling of a vacancy of a Chairman is laid down in section 66B (2) of the said Local Authorities Elections Ordinance.

The contention of the Respondents

- i. The Petitioner cannot and have maintained the present Application since the Petitioner has failed to name a vital and necessary party i.e., Kahatagsdigiliya Pradeshiya Sabha.
- ii. The primary relief sought by the Petitioner, as contained in paragraph 'b' of the prayer of the Petition, is misconceived and/or flawed since the Petitioner has sought to quash the entirety of the Gazette Notification marked 'P20' whereas the said Gazette Notification contains two distinct and separate orders relating two distinct and separate Pradeshiya Sabhas.
- iii. The scope of section 169 of the Act has been interpreted by this Court through four separate orders, each which uniformly clarifies and sets out the correct process and lawful procedure to be followed.
- iv. The budget Meeting of the Pradeshiya Sabha was held on 14.12.2021 at which the Petitioner tabled the budget and majority members at the said meeting made

suggestions against the budget. Accordingly, the said budget was not passed as required by section 169 of the Act.

- v. Despite the 4th Respondent and several Members of the Council requesting the Petitioner to re-submit the budget, the Petitioner arbitrarily rejected such requests and refused to re-submit the budget alleging that the same had already been passed; Therefore, at no time the said budget was amended and/or re-submitted for a vote.
- vi. Petitioner has purportedly relied on the first portion of section 169 of the Act that 'deems' a budget to be duly adopted even if the said budget has not been passed by the Pradeshiya Sabha. Accordingly, the Petitioner has attempted to claim that there was no basis to deem the Petitioner to have resigned from the post of Chairman.
- vii. The contention of the Petitioner that section 66G of the Local Authorities Elections Ordinance (as amended) has not been complied with prior to the 4th Respondent informing the Members of the special meeting held on 27.01.2022 in order to appoint a new Chairman is misconceived in law and erroneous since the 4th Respondent has clearly informed the Petitioner by letter dated 23.12.2021 that he had received complaints from Members.

Scope of sections 168 & 169

The question which arises in this case is whether the Petitioner being the Chairman of the Pradeshiya Sabha is entitled to have the benefit of the deeming provision in the first portion of section 169 of the Act even after two years from the commencement of the term of office of the Council. The other vital 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 vote at the first submission and even failed to re-submit.

The learned Counsel who represented several Respondents in this case also argued 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 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.

I have extensively dealt with the scope of sections 168 & 169 of the Act in my orders 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).***

I hold that the reasoning given by me to arrive at the conclusion in those two cases are applicable in relation to the questions in the instant application also. I may not reiterate all the reasons given by me in the above two cases here because there are several other cases before this Court with identical or similar questions and I have taken the same and identical view in regard to the order on issuance of 'notice' in all such cases.

In the above case of CA/Writ/649/2021, although the Chairman of the Katana Pradeshiya Sabha tabled the budget, he couldn't secure majority votes in favour of the budget and further, has failed to re-submit the budget for a vote. In the case of CA/Writ/12/2021, the Chairman of Kinniya Pradeshiya Sabha couldn't secure majority votes at the re-submission of the budget, whereas, in the instant application the Petitioner (Chairman of the Kahatagasdiliya Pradeshiya Sabha) has not taken a vote in favour of the budget although, he had submitted the same to the Council.

The 1st Respondent referring to aforesaid four orders of His Lordship Justice Obeyesekere argued that the proviso to section 169 is triggered and the Chairman is deemed to have resigned from the post when the budget is not passed by a majority irrespective of the fact that the Chairman has not 're-submitted' it or not 'submitted' even once. That is the basis adopted in respect of all said four orders of His Lordship Justice Obeyesekere, as claimed by the 1st Respondent.

The following passages in the order in CA/Writ/61/2021 is very much relevant to the instant case. In the said case Court has held as follows;

“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.***

“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 4th and 5th 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 1st Respondent, the learned President’s Counsel for the 6th, 8th, 10th, 12th, 15th, 19th and 20th Respondents and the learned Counsel for the 7th and 11th 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.” (Emphasis added)

The Petitioner has advanced an argument on the words “adopt” and “pass” and asserted that there is a distinct difference between 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. However, in my order in CA/Writ/649/2021 (decided on 28.02.2022) and in CA/Writ/12/2021 (decided on 28/02/2022), the view I took in that regard is as follows;

“One cannot distinguish the words "adopted" and “passed” embodied in section 169 of the Act to circumvent the real effect of the said section. The Sinhala text of the section 168 (2) is as follows:”

*“ඒ අයවැය ලේඛනය අදාළ වන වර්ෂය ආරම්භ වීමට පෙර හෝ සෑම ප්‍රාදේශීය සභාවක් විසින් ම, ඒ අයවැය ලේඛනය, එහි යම් සංශෝධන කිසිවක් තිබේ නම්, ඒවා ද සමඟ අවසාන වශයෙන් සැලකිල්ලට හාජන කොට **සම්මත** කරනු ලැබිය යුතු ය.” (Emphasis added)*

“Even though the English text of the section 168 (2) referred to word “adopt” as well as the word “passed”, the Sinhala text of section 168 & 169 uses only one word and that is “සම්මත”. I am of the view that the said word “සම්මත” is equivalent to the connotation of the word “pass” which requires the majority votes of the Council. In terms of section 18 of the Local Government Special Provision Act No. 21 of 2012 by which the proviso to section 169 has been introduced stipulates that when there is an inconsistency between the Sinhala and Tamil text of the Act, the Sinhala text shall prevail.”

The learned Counsel for the 10th Respondent referring to a judgement of the Supreme Court of India alleged that the provisions of the Act must be read harmoniously and to give effect to the legislative intention. ***In Chief Justice of Andhra Pradesh and another vs. LVA Dikshitutu and others (AIR 1979 SC 193)***, the Indian Supreme Court has observed that;

“Where two alternative constructions are possible the Court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion or friction, contradiction and conflict between its various provisions or undermines or tends to defeat or destroy the basic scheme and purpose of the enactment.”

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 of the Respondents in both above two cases i.e., CA/Writ/649/2021 & CA/Writ/12/2022. Now I advert to the precedent set in the following cases by which the scope of the sections 168 & 169 of the Act has been duly analyzed;

- a) ***CA/Writ/24/2021 (Wellawattage Sarath Peiris vs. Katunayake Seeduwa Urban Council, Seeduwa & others, decided on 28.02.2022)***

b) CA/Writ/51/2021 (Manodara Acharige Chaminda Sugath, Chairman vs. Anuradha Yahampath, Governor, Eastern Province & others, decided on 28.02.2022)

c) CA/Writ/57/2021 (H.M. Lalantha Sumith Seneviratne vs. Pradeshiya Sabhawa of Padiyathalawa & others, decided on 28.02.2022)

d) CA/Writ/61/2021 (A.P. Ranasinghe Bandara, Chairman vs. Anuradha Yahampath, Governor of Eastern Province & others, decided on 28.02.2022)

On a careful consideration of the legal analysis made by Court, I summarize the precedent set in those 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. Furthermore, 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.

Moreover, the rationale of the decision of the Court in all above cases in addition to the provisions 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.

Relief

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 'P20' issued by the 1st Respondent and the letter dated 20.01.2022 marked 'P21' issued as a consequent to 'P20' by the 4th Respondent. The 1st Respondent has declared by the said Gazette Notification marked 'P20' that the Petitioner is considered to have resigned from the post of Chairman with effect from 31.12.2021 and the said post 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.

In view of the foregoing, I am of 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.

I have no reason to disagree with the legal analysis established in those four cases (CA/Writ/24/2021, CA/Writ/51/2021, CA/Writ/57/2021 and CA/Writ/61/2021), discussed above, pertaining to the issue of the Chairman of a Pradeshiya Sabha deeming to have resigned from the office of Chairman.

I am mindful of Basnayake CJ.'s statement on the *cursus curiae* that developed over the years in this country. He has observed in ***Bandahamy vs. Senanayake 62 NLR 313 (p.345)*** as follows;

“Two Judges sitting together also as a rule follow the decisions of two Judges. Where two Judges sitting together find themselves unable to follow a decision of two Judges, the practice in such cases is also to reserve the case for the decision of a fuller bench, although the Courts Ordinance does not make express provision in that behalf as in case of a single Judge.”

In the circumstances, I take the view that the questions raised by the Petitioner in the instant application have been resolved in the above orders of this Court by which relevant

applications have been refused in *limine* at the threshold stage itself. 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 hold 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