

**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, Mandamus
and Prohibition under and in terms of Article
140 of the Constitution.*

Kasudeen Mohomed Nihar
Arai Acre,
Kinniya.

CA/WRIT/12/2022

Petitioner

Vs.

1. Anuradha Yahampath
Governor- Eastern Province,
Governor's Secretariat,
Lower Road,
Orr's Hill,
Trincomalee.
2. N. Manivannan
Commissioner of Local Government-
Eastern Province,
Department of Local Government-
Eastern Province,
Eastern Provincial Council,
Kanniya Road, Varothayanagar,
Trincomalee.
3. A.G.S.L. Thennakon
Assistant Commissioner of Local
Government- Trincomalee District,
Department of Local Government-
Eastern Province,
Eastern Provincial Council,
Kanniya Road, Varothayanagar,
Trincomalee.

4. D.M.L. Bandaranayake
Chief Secretary-Eastern Province,
Chief Secretary's Secretariat,

Kanniya Road,
Varothayanagar,
Trincomalee.
5. Kinniya Pradeshiya Sabha
Kinniya.
6. S. Aswathkhan
Secretary-Kinniya Pradeshiya Sabha,
Kinniya Pradeshiya Sabha,
Kinniya.
7. Abdul Rauff Mohomed Asmy
Vice Chairman- Kinniya Pradeshiya
Sabha,
Kurinchakerny 03, Kinniya.
8. Muslimee Hajjyar Saifudeen
Kurinchakerny 03, Kinniya.
9. Abdul Salam Mohomed Naseer
Puthukuduirippu, Kinniya.
10. Aboobakr Mohomed Hussaiden
Nadoothu, Kinniya.
11. Aboobakr Mohomed Ali
Poovarasantheevu, Kinniya.
12. Mohomed Maiyadeen Thawfeek
Kalifa Nagar, Viveli,
Kinniya.
13. Abdul Kudoos Mohomed Aniffa
Manikkampitty, Ailiyadi,
Kinniya.

14. Abdullah Mohomed Rifas
Poovarasanthewu, Kinniya.
15. Abdul Majeed SalihuLebbai
Ayliyadi, Sub Post Office No.296,
Kinniya.
16. Abdullah Ibunullah
Soorangal, Kinniya.
17. Yunis Lebbai Kansullah
Soorangal, Kinniya.
18. Sahul Hameed Jiffry
Sammawachchatheevu, Kinniya.
19. Raliya Ummah Sathique
Kalifa Nagar, Viveli,
Kinniya.
20. Abdul Raheem Rifaya
Poovarasanthewu, Kinniya.
21. Mohomed Najam Sithy Nafeera
Ayliyadi, Kinniya.

Respondents

Before : Sobhitha Rajakaruna, J.
Dhammika Ganepola, J.

Counsel : Faiszer Musthapha PC with Shantha Jayawardhana, Ashan Bandara instructed by Lanka Dharmasiri for the Petitioner.

Pulasthi Rupasinghe with Nilma Abeygunawardhana for the 8th, 10th, 11th, 13th, 16th and 20th Respondents.

Vikum de Abrew ASG. PC with Manohara Jayasinghe, SSC. for the 1st to 4th Respondents.

Supported on: 19.01.2022

Written submissions - tendered on behalf of Petitioners: 02.02.2022

- tendered on behalf of 1st to 4th Respondents: 26.01.2022

Decided on: 28.02.2022

Sobhitha Rajakaruna J.

The Petitioner was elected a member of the Kinniya Pradeshiya Sabha in the Trincomalee 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 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 quashing the order and/or decision in the Gazette notification bearing No.2261/6 declaring the Petitioner is deemed to have been resigned from the office of the Chairman of the Pradeshiya Sabha and the decision in the Gazette notification bearing No. 2261/21 calling for a meeting to appoint a new Chairman. The Petitioner also seeks for orders compelling 1st to 7th Respondents to accept and acknowledge that the budget submitted by the Petitioner for Kinniya Pradeshiya Sabha ('Pradeshiya Sabha') as it has been duly passed at the special meeting held on 24.12.2021.

The sequence of salient events relevant to this application

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

Date	Events
16.11.2021	6 th Respondent Secretary of the Pradeshiya Sabha gave notice to the members of the Kinniya Pradeshiya Sabha ('Members') of a Special Meeting to discuss the budget for the year 2022 ('the budget').

- 19.11.2021 A special meeting was held with the attendance of 11 members, including the Petitioner.
The Petitioner asked the members to submit their views and proposals for the budget. Five proposals were made and adopted unanimously.
Following the meeting, the draft budget was circulated to the members of the Pradeshiya Sabha.
- 09.12.2021 The 47th Session Meeting of the Pradeshiya Sabha was held.
The budget was tabled affording an opportunity for the Members of the Pradeshiya Sabha to tender their views. No such views were made.
A vote was taken. Despite the many disruptions to the meeting, **7 members voted for and 6 voted against the budget**. 1 member was absent and 2 members abstained.
It was suggested for re-poll due to the disruptions suffered.
- 15.12.2021 The 2nd Respondent then stated that the vote on the budget was not duly executed. Thus, the Governor held the vote to be null and void (*Vide* - 'P5') and further, the budget must be re-voted in the presence of the Assistant Commissioner of Local Government, Trincomalee or his representative, in the public auditorium.
- 20.12.2021 The 6th Respondent gave notice to the Members of a Special Meeting for the budget on 24.12.2021.
- 24.12.2021 **The same budget** was presented to the Council.
A vote was taken up. **7 members voted for and 8 voted against the budget**.
- 03.01.2022 The Gazette Notification bearing No. 2261/6 was issued declaring that the Petitioner is deemed to have resigned from the office of the Chairman, effective from 01.01.2022 and accordingly, the office of the Chairman has become vacant.

20.01.2022

The 2nd Respondent summoned a meeting to appoint a new Chairman. Though the Petitioner was absent, 9 out of the 16 Members were present at the said meeting. Mr. Janaf A.S. Mohomed Naseer was elected to the post of Chairman. No steps have been taken so far to declare the election of the new Chairman by way of a Gazette notification.

The concise argument of the Petitioner.

- i. The Budget was duly presented and passed; there were no amendments and/or modifications; It was presented a second time consequent to a directive by the 1st & 2nd Respondents. Therefore, the proviso to section 169 must be read in conjunction with the main part of section 169 and by plain reading it sets out that the budget of the Pradeshiya Sabha is deemed to be duly adopted irrespective of the fact whether it has been approved or not by its Members;
- ii. 1st & 2nd Respondents acting ultra vires called on the Petitioner to re-submit the budget to the Council;
- iii. The budget was presented twice and there was not a single modification, amendment or rejection of any items of the budget;
- iv. In terms of section 168 of the Act, the budget should be "adopted" and the section 169 comes into operation only if the Pradeshiya Sabha rejects/modifies all or any of the items of the budget;
- v. The words "passed" and "adopted" are encapsulated in the provisions of section 169 and there are two different meaning to those two words; Accordingly, the matter of 'passing' the budget in terms of the proviso to section 169 comes into operation only when the Chairman does not agree to the modification, rejections and/ or additions and otherwise the budget is deemed to have been 'adopted' in terms of the first portion of section 169;
- vi. The premise that a 'Pradeshiya Sabha must "pass" its budget' goes against the provisions of section 169 of the Pradeshiya Sabhas Act;
- vii. The Chairman of the Pradeshiya Sabha is required to re-submit the budget for further consideration only when the Chairman rejects modification or additions proposed by the Members.

- viii. When there is no amendment or alternative proposal by the Members, the Petitioner cannot be deemed to have resigned from his post; Members who objected to the budget did not propose alternatives, evincing mala fides on their part since those members sought to use the budget to remove the Petitioner from office.
- ix. Only the section 185(1) of the Act provides the situations in which the Chairman could be removed from office, therefore, there is no other manner in which the 1st and 2nd Respondents can act and publish an order removing the Petitioner from his post.

The contention of the Respondents

The learned Counsel who represented several Respondents advanced the same arguments made in *Madampage Nanda Wijeratne Silva vs Marshall of the Air force Roshan Goonetilleke, Governor-Western Province & others (CA/Writ/649/21 decided on 28.02.2022)* in the instant application as well.

The Respondents argued that, the questions relating to this application have already been resolved by his Lordship Justice Arjuna Obeyesekere with the agreement of his Lordship Justice Mayadunne Corea in four separate cases in this Court, i.e., *Wellawattage Sarath Peiris vs. Katunayake Seeduwa Urban Council, Seeduwa & others (CA/Writ/24/2021 decided on 10.06.2021)*, *Manodara Aacharige Chaminda Sugath vs. Anuradha Yahampath, Governor, Eastern Province & others (CA/Writ/51/2021 decided on 10.06.2021)*, *H.M. Lalantha Sumith Seneviratne vs. Pradeshiya Sabhawa of Padiyathalawa & others (CA/Writ/57/2021 decided on 10.06.2021)* and *A.P. Ranasinghe Bandara, Chairman vs. Anuradha Yahampath, Governor of Eastern Province & others (CA/Writ/61/2021 decided on 10.06.2021)*. Accordingly, Respondents moved that these applications be dismissed in *limine* without issuing formal notice on the Respondents.

In the circumstances, as I mentioned in CA/Writ/649/2021, 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 arguments advanced by the Senior State Counsel ('SSC')

The learned SSC appearing for the 1st to 4th Respondents illustrated three alternative situations, which will follow the submission of a budget to the Local Authority by a Chairman. The three such situations and their respective outcomes have been mentioned in my previous order in CA/Writ/649/2021.

Accordingly, the Chairman of a Pradeshiya Sabha has absolute autonomy over the budget for the first two years of the tenure of the Local Authority, but from the third year the position changes. Therefore, the applicable provision in the instant application is the proviso to section 169, as the first two years have lapsed since the commencement of the term of the office of the Council.

The learned SSC rejecting the arguments of the Petitioner reiterated the fact that the Chairman of a Pradeshiya Sabha is required to re-submit a budget for the approval of the Members when the same has been defeated. The concept of a budget being "deemed to have been passed" cannot be accepted and in every case the budget has to be actually passed by a majority vote and if the Chairman does not take steps to submit an alternative budget, the Chairman will be deemed to have resigned from his post.

Further, the learned SSC referring to His Lordship Justice Obeyesekere's observation in CA/Writ/51/2021 submitted that the publication of the Gazette was not an exercise of power of the Governor and it is only an intimation of a factual position that the office of the Chairman has fallen vacant by operation of law.

Previous orders of this Court on the issue

His Lordship Justice Obeyesekere has observed in *CA/Writ/51/2021 (decided on 10.06.2021)* that once a budget is submitted to the Council & debated and thereafter whatever the modifications or additions that a Chairman may agree to during or after such debate, the budget must be submitted by the Chairman to the Council for its decision. The Court has further held that this is mandatory and is confirmed by the use of the word 'decision' in the

proviso to Section 178A of the Urban Council Ordinance and in terms of its section 26(2) a “decision” would mean a "vote".

His Lordship Justice Obeyesekere has further held that the Chairman 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 the budget has been passed.

His Lordship Justice Obeyesekere has taken a similar viewpoint in *CA/Writ/24/2021 (decided on 10.06.2021)*, *CA/Writ/57/2021 (decided on 10.06.2021)* and *CA/Writ/61/2021 (decided on 10.06.2021)*.

The learned President’s Counsel for the Petitioner submitted that the cases CA/Writ/57/2021 and CA/Writ/61/2021 of this Court, mentioned above, should be distinguished from the instant application.

- i. The facts of the case bearing No. CA/Writ/57/2021 show that the Chairman of the Pradeshiya Sabha has not assented to the amendments proposed to the budget and incorporated same to the proposed budget.
- ii. The facts of the case bearing No. CA/Writ/61/2021 show that although amendments were proposed to the budget they were not presented to the Council.
- iii. There were no amendments proposed in the instant application.

The scope of Section 168 & 169 of the Act

The vital question in this case is whether the Petitioner is entitled to declare the budget which was defeated when it was submitted the second time, as duly adopted/passed under section 169 of the Act on the alleged footing that there wasn’t a single modification or amendment proposed by the Members.

The above question has been exhaustively addressed by His Lordship Justice Obeyesekere in CA/Writ/61/2021, (along with the 3 other similar cases bearing numbers CA/Writ/24/2021, CA/Writ/57/2021 and CA/Writ/51/2021), as elaborated in my previous order in the case bearing No. CA/Writ/649/2021 (decided on 28.02.2022).

I am of the view that the debating, the discussions and voting is a paramount feature in a democratic representative body such as the Pradeshiya Sabha. I need to reiterate the following passage in my order CA/Writ/649/2021 (decided on 28.02.2022).

"The above preamble specifically reflects the representative political will of the constituents. In other words, members of the Pradeshiya Sabha represent their constituents in the Pradeshiya Sabha and act as their agents. Accordingly, democracy and good governance eventually follow with the functioning of the Pradeshiya Sabhas. That is the rationale behind the provisions of Section 14 (1) of the Act. Therefore, taking a vote in the house of the Pradeshiya Sabha is to protect the said democracy and good governance and as a whole the rule of law of the country."

As per my previous Order in the case bearing No. CA/Writ/649/2021, I take the view that the deeming provision should be carefully interpreted in the above lines of the basic principles of democracy and good governance without curtailing the consent or the division of the members of the Pradeshiya Sabha. I hold that the reasoning given by me to arrive at the conclusion in the said case is applicable in relation to the questions in the instant application also.

The precedent set by His Lordship Justice Obeysekere in the aforesaid four cases can be directly adopted in the instant application as well in resolving the questions raised here. For the reasons given by His Lordship Justice Obeysekere, now it is a well-established precedent that a Chairman of a Pradeshiya Sabha is not entitled to declare the budget which was defeated any time after two years, as duly adopted under section 169 of the Act based on the alleged reason that there had been no amendments/modifications/rejections proposed to the budget.

Furthermore, I am not inclined to accept the proposition of the learned President's Counsel for the Petitioner that the word "adopt" has a distinct meaning from the word "pass". I take the view that 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 සෑම ප්‍රාදේශීය සභාවක් විසින් ම, ඒ අයවැය ලේඛනය, එහි යම් සංශෝධන කිසිවක් තිබේ නම්, ඒවා ද සමඟ අවසාන වශයෙන් සැලකිල්ලට භාජන 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 impression 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.

Further, I have observed in the case bearing No. CA/Writ/649/2021 (at page 17) as follows:

" No question arises, if the budget is passed at the first instance. If it is defeated, the deeming provisions in the proviso to section 169 will come in to limelight after the first two years, only if the budget is defeated for the second time irrespective of the fact that the Chairman has accepted the amendments. This is because the proviso to section 169 is also subjected to mandatory provisions laid down in section 168 (2) as discussed in above case CA/Writ/61/2021. Another important ingredient to give due effect to the proviso of section 169 and 1st portion of the said section is the stipulated time period i.e., two weeks."

Relief

It is important to draw my attention to the Petition (marked 'P7(a))' dated 28.12.2021 filed by the Petitioner and withdrawn subsequently. The Petitioner alleges in paragraph 10 of the said petition as follows;

"Without prejudice to the grave concerns the Petitioner had and continues to have with regard to the vires and legality of the aforesaid direction, the Petitioner in good faith called for a new reading on the budget and notice was accordingly sent to the 8th to the 22nd Respondents by the

6th Respondent calling for a meeting of the 5th Respondent Pradeshiya Sabha on 24 December 2021"

Moreover, I find the similar averments in paragraph 10 of the instant application as well. The paragraph 12 (a) to 12 (d) of the Petition of the Petitioner are as follows:

- a. "Accordingly, the Petitioner presented the very same budget annexed as "P3(b)" herein above at the said meeting of the 5th Respondent Pradeshiya Sabha held on 24th December 2021."*
- b. "During the reading of the budget there were no amendments proposed by any member of the Pradeshiya Sabha."*
- c. "The Petitioner accordingly, accepted the said Budget as the duly approved Budget of the 5th Respondent in terms of the Law."*
- d. "However, certain members moved for a division and a vote on the said Budget and when the vote was taken the members voted as 7 voting for and 8 members voting against."*

In the above background now, I advert to the reliefs sought by the Petitioner in this application.

The 2nd Respondent by his letter dated 15.12.2021 (marked 'P5(i)') has informed the Petitioner that the voting taken place on 09.12.2021 had been null and void as the voting process was not properly implemented and also due to the fact that the decision on voting had not been pronounced to the Council accurately. In the same letter the 2nd Respondent has given instructions to the Petitioner to repeat the budget 2022 and take a vote in the presence of the 3rd Respondent. It is obvious with the contents of the aforesaid paragraphs of the Petition that the Petitioner without challenging the said direction has acquiesced with the decision of the 1st Respondent and/or the 2nd Respondent and has taken steps to re-submit the budget to the Council. It is apparent that the Petitioner has opted not to challenge the legality of the decision of the 1st Respondent who directed to re-submit the budget on the grounds given by the 1st Respondent.

Therefore, by perusing the documents submitted by the Petitioner, I find the submission of the budget on 24.12.2021 is none other than a re-submission of the budget which comes well within the purview of the proviso to section 169 of the Act. On 24.12.2021 upon the said re-

submission of the budget, the Petitioner has failed to secure the majority votes and therefore, the Petitioner shall be deemed to have resigned from the office of Chairman.

In this regard it is very much important to draw the attention to the following paragraphs in the said CA/Writ/61/2021 (at pages 7 & 8);

- 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.”*

Thus, 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 Petitioner was deemed to have resigned from his post of Chairman of the Pradeshiya Sabha.

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 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