

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.*

CA/WRIT/649/2021

Madampage Nanda Wijeratne Silva
237, "Nirosha",
Dewamottawa,
Adiambalama.

Petitioner

Vs.

1. Marshal of the Airforce Roshan
Goonetilleke
Governor – Western Province,
10th Floor,
204, Denzil Kobbekaduwa Mawatha,
Battaramulla.
2. Kasun Epa Seneviratne
Commissioner of Local Government,
Western Province,
Department of Local Government –
Western Province,
204, Denzil Kobbekaduwa Mawatha,
Battaramulla.
3. K. M. K. C. J. Fernando
Assistant Commissioner of Local
Government (Acting) – Gampaha
District, Kachcheri Complex,
Gampaha.
4. J. M. C. Jayanthi Wijetunga
Chief Secretary – Western Province,
204, Denzil Kobbekaduwa Mawatha,
Battaramulla.
5. Katana Pradeshiya Sabha

Demana Junction,
Katana.

6. K. H. Kapila Kumara
Secretary – Katana Pradeshiya Sabha,
Demana Junction,
Katana.
7. K. S. Kumara Fernando
Vice Chairman – Katana Pradeshiya
Sabha,
Demana Junction,
Katana.
8. D. Namal Siriwardena
100/38/B, City Home,
Katana North,
Katana.
9. A. Sarath Premathilaka de Silva
296, K. C. de Silvapuraya,
Thimbirigaskatuwa.
10. Ajith Rohan Krishantha Fernando
137, Katuwarippuwa West,
Katana.
11. M. Mahesh Duminda de Silva
122/1 Katiyala,
Demanahandiya.
12. N. Sisira Chandra de Silva
95/1, Dalupatha Road,
Thimbirigaskatuwa.
13. G. A. Don Ranpala
392/20, Kularathna Mawatha,
Kimbulpitiya Road,
Negombo.
14. A. R. de Silva
297, Akkarapanahawatta,
Kimbulpitiya Road,
Negombo.

15. N. Prashan Nilushan Fernando
28/36/1, Horanhena Janapadaya,
Kimbulpitiya.
16. J. A. Don Hemantha Priyadharshana
Jayalath
23, Sri Udyanaya Kowinna,
Adiambalama.
17. M. Chaminda Ruparathna Silva
270/1, Heenatiyana,
Minuwangoda.
18. H. H. Don Pushpa Kumar Indika
Gunawardena
91/B, Kuswala,
Raddolugama.
19. A. M. Nishantha de Silva Gunasekara
3/B/30/R, National House,
Raddolugama.
20. K. Upuli Wasana Rowel
344/A, Raddoluwa,
Raddolugama.
21. K. Ranjan Prabath Fernando
360/1/A, Housing Scheme Road,
Raddoluwa,
Raddolugama.
22. E. A. Ravindra Rupathunga
197/A, Jana Raja Mawatha,
Kasgahawatta,
Kotugoda.
23. W. Dinesh Dhammika Silva
287/4, Wisampura Udammita,
Ja-ela.
24. R. A. Chaminda Jagath Kumara
Rathnayaka
291/R, Ashokarama Mawatha,
Adiambalama.

25. M. Rose Fererira
351/A1, Raddoluwa,
Raddolugama
26. K. Upul Priyantha
45, Nayanalokagama,
Demanhandiya.
27. N. Asanga Kamal Siri de Silva
352/3, Heenatiyana,
Minuwangoda.
28. A. AseI Niroshan Jayawardena
15/1. Dewamottawa,
Adiambalama.
29. G. Kanthi Fonseka
3/D/17, National Housing Scheme,
Raddolugama.
30. K. Shrimanthi Manel Kumuduni
135/a, Alawathupitiya,
Seeduwa.
31. M. D. Shehani Lakrandi Appuhami
178/36/1, Korayawatta,
Bambukuliya,
Kotchchikade.
32. W. L. Chaminda Priyadharshana
Fernando
151, Shanthajude Mawatha,
Katuwapitiya, Negombo.
33. A, Krasantha Silva Pulle
217/8, Shanthakayithan Mawatha,
Welihena, Kotchchikade.
34. J. Lakshman Surendra Fernandopulle
160, Athgaka
Kochchikade.
35. W. Athula Pradeep Fonseka
104, Udangawa,
Kotchchikade.

36. M. Lesile Peries Jermiyas Pulle
130, Athgala
Kotchchikade.
37. M.L.D. Roshan Peiris
06, Johnslandwatta 1,
Kadawala,
Katana.
38. H. Rohitha Jananda Silva
287/B/1, Thekkawatta Road,
Dawatagahawatta,
Thimbirigaskatuwa.
39. K. Neranjala Madushika Fernando
260, Kadasuridugama,
Akkarapanaha,
Negombo.
40. K. Dilantha Indrajith Silva
317, Abhayaraja Mawatha,
Heenatiyana,
Minuwangoda.
41. W.A.D. Sriya Kumari Prabashili
Wanigasundara
3/B/47/L, National Housing Scheme,
Raddolugama.
42. K. Nadeeka Pushpakanthi
72/21, Thummulwatta,
Dambaraduraya,
Seeduwa.
43. M.M.M.P. Disna Kumudini
Karunarathna
10/c, 7th Lane,
Nirmala Mawatha,
Katuwapitiya,
Negombo.
44. D. Malani Rodrigo Pulle
294/6a, Walihena,
Kotchchikade.

45. A.H.D. Sudhima Ruwinsara
314, Thimbirigaskatuwa,
Negombo.
46. N. Dharmapriya Wijesinghe
4/D/1, Lansiyawaadiya,
Kotugoda.
47. J. A. Ajith Priyadarshana Appuhami
416/84/2, Atabhagahawatta Road,
Uthurukadirana,
Demanhandiya.

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Faizer Musthapha PC with Pulasthi Rupasinghe and Ashan Bandara for the
Petitioner

Monohara Jayasinghe, SSC for 1st to 4th Respondents

Sanjeeva Jayawardana PC with Rukshan Senadheera for the 7th, 8th, 10th to
15th, 17th, 18th and 20th to 24th Respondents

Shantha Jayawardane for the 9th, 16th, 26th, 27th, 29th to 33rd, 36th, 38th, 39th,
43rd & 44th Respondents

Supported on: 10.01.2022 and 13.01.2022

Written submissions: tendered on behalf of the Petitioner: 02.02.2022

tendered on behalf of the 1st to 4th Respondents: 27.01.2022

tendered on behalf of the 7th, 8th, 10th to 15th, 17th, 18th and 20th to
24th Respondents: 03.02.2022

Decided on: 28.02.2022

Sobhitha Rajakaruna J.

The Petitioner was elected a member of the Katana Pradeshiya Sabha in the Gampaha District at the Local Government Elections held in 2018 and later 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.

The Petitioner seeks, inter alia, for orders in the nature of writs compelling 1st to 7th Respondents to accept and acknowledge the alleged fact that the budget submitted by the Petitioner for Katana Pradeshiya Sabha ('Pradeshiya Sabha') has been duly passed at the special meeting held on 15.12.2021. Furthermore, the Petitioner seeks orders preventing the 1st to 7th Respondents from deeming that the Petitioner has resigned from office as the Chairman of the Pradeshiya Sabha in terms of the proviso to section 169 of the Act.

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
22.10.2020	Western Provincial Council & 1 st Respondent promulgated rules relating to procedure for the conduct of business at meetings of the Pradeshiya Sabha marked 'P2' ('Rules')
09.09.2021	The 6 th Respondent Secretary of the Pradeshiya Sabha by way of a notice informed the Pradeshiya Sabha to forward proposals regarding the budget on or before 25.09.2021.
05.11.2021	The Petitioner summoned a meeting of the joint Committee of the Pradeshiya Sabha to discuss the matters relating to the draft budget.
09.11.2021	A meeting of the Finance and Policy Planning Committee of the Pradeshiya Sabha was summoned to obtain their recommendations for the budget.
10.12.2021	A notice was circulated to summon a meeting to be held on 15.12.2021 in order to adopt the budget for the year 2022.
15.12.2021	Special meeting of the Pradeshiya Sabha was held.

The 9th, 16th, 26th, 27th and 36th Respondent members proposed several amendments to the said budget. The Petitioner agreed to such amendments.

A vote was taken. **17 members voted for and 25 voted against the budget.**

- 16.12.2021 The Petitioner informed the 1st Respondent that there was no basis to reject the budget as the Petitioner had accepted the amendments proposed. (*Vide* - 'P5')
- 22.12.2021 The 3rd Respondent informed the 1st Respondent through the 2nd Respondent that there is a necessity to advise the Council as to whether the budget should be re-submitted in a situation where the Chairman has accepted the amendments and however, it had not been passed by the members of the Pradeshiya Sabha ('Members'). (*Vide* - 'P6')
- 23.12.2021 The 2nd Respondent by letter marked 'P7' has communicated the 1st Respondent's opinion, that in terms of section 168 & 169 of the Act read together with section 17 of Local Government Special Provisions Act No. 21 of 2012 and also in terms of the said Rules, the Council should take a decision in respect of the budget.

The concise argument of the Petitioner.

- i. The 1st to 6th Respondents appears to be acting under a misapprehension with regard to the provisions of the Meeting Rules marked 'P2' and the provisions of proviso to section 169 of the Act.
- ii. In terms of the said Rules and in conjunction with the provisions of section 169 of the Act, 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.
- iii. The statute only requires the Chairman of a Pradeshiya Sabha to consider and agree to any amendment or modification proposed by the Members; Further, since the Petitioner has accepted the amendments proposed, there is no requirement for further consideration of the budget.
- iv. The Rules provide that if a Pradeshiya Sabha is to reject any item in a budget then an alternative has to be proposed; Therefore, the consideration of budget of a Pradeshiya Sabha does not in any manner has the nature and tenor of a 'no confidence motion' against its Chairman.

- v. The Chairman of the Pradeshiya Sabha is required to resubmit the budget for further consideration only when the Chairman rejects modification or additions proposed by the Members.
- vi. The deeming provision in the proviso to section 169 to the Act will be triggered only in the event the Chairman does not agree to any modifications or amendments proposed by the members.
- vii. As the Petitioner has accepted all the amendments proposed to the budget in the first instance at the meeting held on 15th December 2021, the said deeming provision does not apply to the instant matter and therefore, the Petitioner will not be deemed to have resigned from the office of Chairman;
- viii. When there is no alternative proposal by the Members, the Petitioner cannot be deemed to have resigned from his post.
- ix. The Petitioner has accepted and agreed to all amendments and additions proposed by the Council and accordingly, he should not be penalized when he has not disregarded the amendments or modifications proposed by the Members;
- x. As such, the relevant statutory provisions considered in conjunction with the Rules promulgated by the Gazette Notification marked 'P2' clearly establishes the fact that the provisions of the proviso to section 169 of the Act cannot be applied to the Petitioner;

The contention of the Respondents

The learned Counsel who represented several Respondents strenuously 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 4 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, 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.

The arguments advanced by the Senior State Counsel ('SSC')

In response to the contentions of the Petitioner, the learned SSC appearing for the 1st to 4th Respondents submitted that it is necessary to be familiar with the three alternative situations, as mentioned below, which will follow the submission of a budget to the Local Authority by a Chairman;

- i.
 - A. The budget is adopted by the majority
 - B. The budget is defeated and in defeating the budget the Council will make certain counter proposals for the Chairman's budget. The counter proposals may take the form of a modification, rejection or additions to the budget.
 - C. The budget is defeated and no counter proposals are presented.
- ii. In the case of A, there is absolutely no controversy as the budget has been passed, in case of B, i.e., where counter proposals are made, the Chairman will have to decide whether he agrees or disagrees with the counter proposals and in the case of C, i.e., where in defeating the budget no counter proposals are made, the question of agreement or disagreement does not logically arise (as there is nothing to agree or disagree with)

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 and therefore, the learned SSC submits that 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 that there is no requirement to re-submit the budget upon its defeat, asserts that the Chairman is required to re-submit a budget for the approval of the Members when the same has been defeated. According to the learned SSC, 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 and if the Chairman does not take steps to submit an alternative budget, the Chairman be deemed to have resigned.

Previous orders of this Court on the issue

The following reasoning and the conclusions of His Lordship Justice Obeyesekere in ***Manodara Aacharige Chaminda Sugath vs. Anuradha Yahampath, Governor, Eastern Province & others (CA/Writ/51/2021 decided on 10.06.2021)*** are very much relevant

to the circumstances of this case, although the sections referred to are from the Urban Council Ordinance;

“The ability of the Council to carry out its statutory functions in the following year is intrinsically linked to having a budget duly passed by the members of the Council, and demonstrates the ability of the Chairman to command the confidence of the majority of the Council and have the necessary finances to attend to the day to day operations and the vital developmental activities of the Council.”

“...As submitted by the learned Senior State Counsel for the 1st Respondent and the learned Counsel for the 7th - 17th Respondents, the Petitioner has thrown all democratic norms out of the window.”

“Once the budget is submitted to the Council and debated and whatever the modifications or additions that a Chairman may agree during or after such debate, the budget must be submitted by the Chairman to the Council for its decision. This is mandatory and is confirmed by the use of the word, ‘decision’ in the proviso to Section 178A. In terms of Section 26(2), a decision would mean a vote. I am therefore of the view 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 that the budget has been passed. The claim that the Chairman agreed with the modifications and amendments and therefore the budget has been passed is a red herring. The budget must be passed by a majority vote if the Chairman wishes to avoid the deemed resignation being triggered.”

“In my view, the crux of the matter is that the Chairman must ensure that he has in place a budget duly passed by the Council by the due date. If he fails in this regard at whatever point of the process, he is deemed to have resigned from the office of Chairman by operation of law. A Chairman who does not take a vote cannot be in a better position than a Chairman who has resubmitted the budget and taken a vote, only to have the budget defeated by the Council.”

His Lordship Justice Obeyesekere has taken a similar viewpoint in ***Wellawattage Sarath Peiris vs. Katunayake Seeduwa Urban Council, Seeduwa & others (CA/Writ/24/2021 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)***.

The learned President's Counsel for the Petitioner submitted that the above four cases of this Court, discussed above, should be distinguished from the instant application on the below mentioned grounds;

- i. the facts of the cases bearing No. CA/Writ/57/2021 and CA/Writ/24/2021 show that the Chairman of the Pradeshiya Sabha & Urban Council respectively has not assented to the amendments proposed to the budget and incorporated same to the proposed budget. Further, in the said cases the presentation and/or modification and/or amendment and/or rejection of a budget is not governed by the Rules marked 'P2';
- ii. the presentation and/or modification and/or amendment and/or rejection of a budget, in the applications bearing No. CA/Writ/61/2021 and CA/Writ/51/2021 is not governed by Rules marked 'P2'

Accordingly, the learned President's Counsel argued that;

- a. the proviso to section 169 of the Act must be read in conjunction with the main part of section 169;
- b. the plain reading of the main part of section 169 clearly sets out that a budget for a Pradeshiya Sabha is deemed to be the budget of that Council irrespective of the fact whether it is adopted or not by a majority of the Council.

Submissions on behalf of the 7th, 8th, 10th to 15th, 17th, 18th and 20th to 24th Respondents.

The submissions of the learned President's Counsel for the above Respondents in a nutshell is that the Petitioner has not re-submitted the budget to stand the test of vote to ascertain whether the majority support the budget and to see whether he has the confidence of the Council.

The learned President's Counsel submitted that the reasons or motivations as to why a Council or a majority would defeat a budget is not a matter which can be in the epi-center of the inquiry before this Court in as much as the law does not admit of the vagaries of these motivations or the vicissitudes of time and man. He further submitted that the 'law and the statue book' only looks in to the legal and the related factual question whether a Chairman failed to comply with the provisions stipulated in the proviso to section 169 of the Act.

He further submitted that in an instance where a Chairman of an Urban Council submits a budget or a supplementary budget under section 169 of the Act after a period of two years from the commencement of the period of the office of the Council and then in an event of the Council rejecting the budget in its entirety or part thereof and if the Chairman then fails to have it duly passed within the stipulated time period, the Chairman of the Pradeshiya Sabha, by operation of the law, will be deemed to have resigned from the office.

Rules.

The Petitioner relies upon Rules 23 to 26 of 'P2' which has been promulgated by the Western Provincial Council and the 1st Respondent-Governor and submits that he has complied with all the provisions of those Rules and the Court of Appeal has not referred to or taken in to consideration such Rules at the time of issuing the orders in the aforesaid four cases.

In response to the Petitioner's contentions on Rules, the Respondents intimate that CA/Writ/24/2021 relates to the Katunayake Seeduwa Pradeshiya Sabha which is more or less similar to Katana Pradeshiya Sabha since both are situated in the Western Province.

It is well observed that the Rules marked 'P2' have been enforced to regularize the procedure for conducting business at meetings of Pradeshiya Sabha and to repeal Rules of 1998. Therefore, the Rules 23 to 26 described under the sub-heading "*Council approval relating to Budget documents*" are nothing more than the procedure and such procedure cannot possibly outweigh the relevant written law specifically mentioned in section 168 and section 169 of the Act. In Rule 28, the procedure in relation to voting and recording of votes has been laid down and particularly prescribed how to conduct the voting when the Pradeshiya Sabha expresses its consent or when a member calls for a division.

The scope of section 168 & 169 of the Act

The important question in this case is 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. Further, it is essential to examine whether the Petitioner is deemed to have resigned from the office of Chairman when he has failed to re-submit the budget for a vote.

His Lordship Justice Obeyesekere has exhaustively addressed questions similar to the instant application in ***A.P. Ranasinghe Bandara, Chairman vs. Anuradha Yahampath, Governor of Eastern Province & others (CA/Writ/61/2021 decided on 10.06.2021)***, where His Lordship has stated as follows;

*“The effect of Section 169 is that by operation of law, the budget submitted by the Chairman shall be considered as the duly adopted budget of a Pradeshiya Sabha, even though the said budget has not been passed by the Pradeshiya Sabha and therefore does not have the support of the majority of the members of the Pradeshiya Sabha. The law therefore has provided a concession to a Chairman of a Pradeshiya Sabha to function for a period of two years, notwithstanding that he may not have the support of the majority of the Pradeshiya Sabha to pass the budget. **It must be kept in mind that notwithstanding the above deeming provision, the obligation placed on the Chairman by Section 168 to submit the budget to the Pradeshiya Sabha must still be complied with, and that the concession under Section 169 extends only to a Chairman who submits a budget to the Pradeshiya Sabha and permits the members to vote on the said budget.**”*

(at page 5)

*“Thus, with the introduction of the proviso in 2012, the concession provided to a Chairman by Section 169 to continue in office notwithstanding his inability to have the budget passed by a majority of the members of the Pradeshiya Sabha **has been limited to the first two years of office.** After the first two years, it is not only imperative that the budget is submitted to the Pradeshiya Sabha, it is also imperative that the budget is passed by a majority decision.”*

“In my view, Section 169 and the proviso contemplates two decisions of the Pradeshiya Sabha which attracts the provisions of Section 14 and therefore requires a vote by the Pradeshiya Sabha. The first is the decision of the Pradeshiya Sabha to modify, add or reject the budget. The acceptance of a modification and/or an addition, or the rejection of the budget as a whole, should be by way of a majority vote of the Pradeshiya Sabha. The second is the decision of the Pradeshiya Sabha whether to pass the budget that has been re-submitted by the Chairman, which too must be taken by a vote of the members present at the meeting.” (Emphasis added)

The rationale of the decision of the Court in all the above cases in addition to the said section 168 & 169, is mainly based on section 14(1) of the Act, which stipulates that;

‘All matters or questions authorized by this Act or by any other written law to be decided by a Pradeshiya Sabha shall be decided upon by the majority of members present at any meeting of the Pradeshiya Sabha held in accordance with the provisions of this Act.’

The crux of the dicta in all above four cases, as succinctly illustrated by His Lordship Justice Obeyesekere, is that a Chairman of a Pradeshiya Sabha must ensure that his budget should be duly passed by the Pradeshiya Sabha with a majority vote, by the due date, irrespective of the fact that the budget is being presented during the first two years of the Council or after. If he fails in this regard at whatever point of the process set out in the proviso to section 169, he shall be deemed to have resigned from the office of Chairman by operation of law.

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 නිබේ 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 connotation of the word “pass” which requires the majority votes of the Council. In terms of section 18 of the Local Government Special Provisions 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.

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. The Parliament of Sri Lanka is the apex body of all representative bodies and it is the sovereign legislature in the country. The Provincial Councils introduced by the 13th Amendment to the Constitution also exercise limited legislative powers. After the Central Government and Provincial Councils, the Local Government bodies are the third tier of the Government of Sri Lanka. Pradeshiya Sabha has been established by the Pradeshiya Sabhas Act No. 15 of 1987 and

the Members of the Pradeshiya Sabha are elected under the provisions of Local Authorities Elections Ordinance.

Dr. Subhash C. Kashyap, a Consultant in Constitutional law, in his book **Anti-defection law and Parliamentary Privileges**, (*Universal Law Publishing Co. Third Edition, p. 10*), queries if votes are not going to be altered by speeches, what is the relevance or rationale of parliamentary democracy and he further continues to state as follows;

“Debates and discussions are expected to be and often are helpful in swaying the voting pattern in legislatures. For example, the Indian Independence Bill, 1947 was opposed by the Conservative Party of England. Since the Labour Government had a big majority, the Bill passed through all the stages in the Commons easily. But in the House of Lords, there was Conservative majority. The Conservatives could have defeated the Bill, it was, however, Conservative Lord Halifax’s speech that changed the mood of the Lords and the Bill was passed. In India itself, story is told how Jawaharlal Nehru tried to defend the provisions of a Bill he was himself piloting and at the end remarked that the majority in the House was with him on that issue. C. Rajagopalachari who was known for his sharp wit, demolished all of Nehru’s arguments and concluded by saying that on that day majority might be with Nehru but logic was with hm. Nehru gracefully yielded and accepted Rajagopalachari’s view. **Parliamentary democracy can have meaning, only if debates are allowed to sway the voting pattern in the legislature.**”

It is also pertinent to note the Preamble of the Pradeshiya Sabhas Act No. 15 of 1987 which reads;

“An Act to provide for the establishment of Pradeshiya Sabhas with a view to provide greater opportunities for the people to participate effectively in decision making process relating to administrative and development activities at a local level; to specify the powers, functions and duties of such Sabhas; and to provide for matters connected therewith or incidental thereto”

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 the good governance eventually follow with the functioning of the Pradeshiya Sabhas. That is the rationale behind the provisions of the Section 14(1) of the Act. Therefore, I am of the view that taking a vote in the house of the Pradeshiya Sabha is merely to protect the said democracy and good governance and as a whole the rule of law of the country.

In the circumstances, 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.

On a careful examination of the provisions of section 169 of the Act emanates that the proviso to the section (introduced by Section 17 of the Local Authorities [Special Provisions] Act No. 21 of 2012) is limited to the period after two years since the commencement of the term of office of the Council. Both the proviso as well as the 1st portion of the section 169 stipulates the words “is not passed” & “has not been passed” and that implies the peremptory requirement of submitting the budget for the vote of the members irrespective of the fact that the budget is being presented during the first two years of the Council or after.

Petitioner’s contention is that the Chairman of the Pradeshiya Sabha is required to re-submit the budget for further consideration only when the Chairman rejects modification or addition purported by the Members. However, in line with the precedent set in the aforementioned cases, it is a mandatory duty of the Chairman of the Pradeshiya Sabha to submit the budget for a vote although he accepts modifications or additions and further, it is mandatory for him to re-submit the budget in the event it is defeated at the first submission.

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, when the budget is defeated or when it is not submitted for a vote 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. In this regard it is very much important to draw 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.”*

Relief

The Petitioner has prayed for in the prayer of the Petition, *inter alia*, for an order in the nature of a writ of Certiorari quashing the decisions contained in the document marked ‘P7’.

By letter dated 16.12.2021 marked ‘P5’, the Petitioner has informed the 1st Respondent that when he had acted in compliance with Rules 23 to 26 of ‘P2’, no party is entitled to declare that the budget has not been duly passed. Moreover, by ‘P5’ he requests the 1st Respondent to consider the budget as been duly passed. In response to the said letter ‘P5’, the 2nd Respondent has communicated the decision of the 1st Respondent to the Petitioner as follows;

“1987 අංක 15 දරණ ප්‍රාදේශීය සභා පනතේ **168 වගන්තිය, 169 වගන්තිය** සමඟ කියවිය යුතු 2012 අංක 21 දරණ පළාත් පාලන ආයතන (විශේෂ විධි විධාන) පනතේ 17 වන වගන්තිය හා ප්‍රාදේශීය සභා රැස්වීම් කටයුතු පිළිබඳ රීති වලට අනුකූලව 2022 වර්ෂය සඳහා වන අයවැය ලේඛනය සම්බන්ධයෙන් **සභාව තීරණය කළ යුතු වේ.**”

Accordingly, the 1st Respondent-Governor has opined that the affairs relating to the budget should be decided by the Council in compliance with the provisions of the sections 168 & 169 of the Act.

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 matters pertaining to the budget should be decided by the Council.

Irrespective of the fact whether the Petitioner in the instant case has accepted the amendments and modifications, he has failed to secure the majority votes in favour of the budget on 15.12.2021. The budget was defeated on 15.12.2021, and that was during period after 2 years since the commencement of the term of office of the Council and accordingly, in my view, the Petitioner has failed to adhere to a cardinal requirement of re-submitting the budget after the defeat. It is necessary to draw my attention to Rule No. 12 of ‘P2’ which deals with the mandatory provisions how the business of the Pradeshiya Sabha shall be transacted. In view of Rule 12(a), the confirmation of minutes of previous meeting is

mandatory and however, no evidence has been made available to show that the said step has been duly followed by the Pradeshiya Sabha.

For the aforementioned reasons, I have no ground to disagree with the legal analysis established in those four cases, 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 those cases had been dismissed 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 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 refuse this application.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal