

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

CA/WRIT/52/2022

Handunkutti Pedige Chandana
Kumara
Chairman,
Mawanella Pradeshiya Sabha,
Mawanella.

Petitioner

Vs.

1. Tikiri Kobbekaduwa
The Governor,
Sabaragamuwa Province,
Block C-Ground Floor,
Sabaragamuwa Provincial Council
Complex,
New Town,
Ratnapura.
2. Assistant Commissioner of Local
Government of Kegalle
Office of the Assistant Commissioner
of Local Government,
Kegalle.
3. Mawanella Pradeshiya Sabha
Mawanella.
4. K.G. Piyathissa
Vice-Chairman
Mawanella Pradeshiya Sabha
Mawanella.

5. Commissioner of Local Government
of Sabaragamuwa Province
Provincial Council Complex,
New Town,
Ratnapura.
6. The Returning Officer for Mawanella
Pradeshiya Sabha
Assistant Election Commissioner's
Office,
Kegalle.
7. A.C.U.M. Askar
8. P.A.U. Podi Nilame
9. K.M. Aminulla
10. M.M. Mohommed Faizel
11. M.R.L.M. Ismail Reeza
12. Chandana Ruwan Kumara
Dayarathana
13. M.M. Abdul Gaffar
14. W.G. Wijebanda
15. M.A. Vishwanath Weerasinghe
16. H.P.A. Lakmini Rasanjali
17. S.A. Chandima Gunasekara
18. K.K. Dilrukshi Abeysinghe
19. M.H. Chandrani Siriyalatha
20. R.A. Jayanthi Kumari
21. M.L.M. Mansoor
22. J.M. Anwara Bawa
23. D.M. Keerthi Bandarathilaka
24. M.S.M. Kamil
25. R.P.N. Dasantha Stephen
26. P.H. Manjula Nilanjan Handakumara
27. A.P.S. Alkegama
28. A.W.R. Sunil Gunarathna
29. G. Premarathna Banda
30. K. Palitha Wimalasena
31. A.M Manjula Adhikaram
32. A.G. Saman Dhammika Weragoda
33. P. Pradeepika Priyanthi Kumari
34. W.S. Priyadharshini Perera
35. K.M. Udenika Sama Kumari
36. K.K. Dananja Neranjali
37. A.M. Baby Manika
38. K. Jayantha Kumara

39. H.M. Lakmini Krishantha Herath
40. M.R.M. Asam
41. M.H.R. Dhammika Neranjani Kumari
42. M.R.M. Nawshad
43. A.H.M.S.S. Kumarihamy Abeyratna
44. S.M.M.N. Marikkar

7th to 44th Respondents,
Members of Mawanella Pradeshiya
Sabha,
Mawanella Pradeshiya Sabha,
Mawanella.

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Nigel Hatch PC with Shantha Jayawardena and Niranjana Arulpragasam for
the Petitioner

Monahara Jayasinghe, SSC for the 1st to 3rd & 5th Respondents

Supported on: 07.02.2022

Written submissions: tendered on behalf of the Petitioner : 15.02.2022

tendered on behalf of the 1st to 3rd & 5th Respondents: 17.02.2022

Decided on: 28.02.2022

Sobhitha Rajakaruna J.

The Petitioner was elected a member of the Mawanella Pradeshiya Sabha ('Pradeshiya Sabha') in 2018 and later was elected as the Chairman of the said Pradeshiya Sabha. The Petitioner was required to submit a budget for the succeeding year i.e., year 2022 ('budget'), in terms of the Pradeshiya Sabhas Act No. 15 of 1987, as amended ('the Act'). The issue that emerges in this application revolves around the said budget.

In this application, the Petitioner seeks, *inter alia*, for orders, quashing the Gazette Notification bearing No. 2262/49 dated 15.01.2022 by which the 1st Respondent proclaimed that the Petitioner is considered to have resigned from the post of Chairman and also for orders quashing the Gazette Notification bearing No. 2263/12 dated 19.01.2022 by which the 5th Respondent has scheduled a meeting of the Pradeshiya Sabha to elect a new Chairman.

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	Event
18.06.2021	The Petitioner requested all members of the Pradeshiya Sabha ('Members') to submit proposals to be included in the budget 2022. (<i>Vide</i> - 'P13')
06.10.2021	The Petitioner issued a reminder to the Members to submit the proposals. (<i>Vide</i> - 'P14') The Petitioner also addressed letters to the OIC of Police Station, religious leaders and community leaders in the area calling for proposals for the budget. (<i>Vide</i> - 'P15A')
18.10.2021	Petitioner informed Members that the draft budget 2022 will be discussed at a special meeting on 22.10.2021 and further stated that Members who had not submitted proposals could submit such at the meeting. (<i>Vide</i> - 'P16')
22.10.2021	A special meeting was held. The suggestions made by the Members who attended the meeting were incorporated into the draft budget
16.12.2021	A special General Meeting was held. Few members made views against the budget and also three amendments were proposed. The said amendments were defeated by majority votes, However, no vote was taken in respect of passing the budget. The Petitioner declared that the budget has been duly adopted without any amendments. Few members requested for a division.

- 22.12.2021 The 5th Respondent informed the Petitioner to get the budget duly passed by the Members in term of section 168 (2) of the Act and the Pradeshiya Sabha Meeting Rules 1988. (*Vide* – ‘P18’)
- 28.12.2021 As oppose to P18, the Petitioner has written a letter to 5th Respondent stating that the budget has been duly passed although no vote was taken on the budget. (*Vide* - ‘P19’)
- 29.12.2021 The 5th Respondent further informed the Petitioner to submit the budget in order to get it duly passed by the Council. (*Vide* - ‘P20’)
- 31.12.2021 In response to ‘P20’, the Petitioner sent a letter to the 5th Respondent stating that the proposed amendments to the budget were duly considered in terms of section 168 (2) of the Act and that the Council decided to vote against the said amendments and in the circumstances, the budget was adopted without any amendments as contemplated in section 168 of the Act.
- 15.01.2022 The 1st Respondent published a Gazette Notification bearing No. 2262/49 dated 15.01.2022 marked ‘P20’, declaring that the Petitioner is considered to have resigned from the post of Chairman with effect from 31.12.2021.
- 15.01.2022 The 1st Respondent made an order vesting the powers, performance and functions of the Chairman of the Pradeshiya Sabha in the Vice-Chairman until the vacancy of the Chairman is filled. (*Vide* - ‘P23’)
- 19.01.2022 The 5th Respondent has published a Gazette Notification bearing no. 2263/12 dated 19.01.2022 scheduling a meeting of the Pradeshiya Sabha to elect a new Chairman. (*Vide* - ‘X’)

The concise argument of the Petitioner.

- i. The budget has been duly adopted in terms of the provisions of sections 168 & 169 of the Act.
- ii. There were no alternative proposals presented by any member apart from the three amendments which were duly considered and defeated; as such in terms of sections 168 & 169, no items were added or rejected from the budget; as a result, the budget was duly adopted without any amendments.

- iii. As there was no opposition expressed to the budget (apart from the 3 amendments which were defeated), there is no requirement for the budget to be passed by a majority vote.
- iv. The request for a vote on the budget was made only after the Chairman declared that the budget had been duly passed and accordingly, there is no necessity for the budget to be re-submitted; as a result, Petitioner could not be deemed to have resigned from the post of Chairman.
- v. The 1st Respondent is devoid of power and/or authority under the Constitution and/or any other law to issue Gazette Notification marked 'P22'
- vi. The orders/decisions in 'P22' and 'P23' are tainted with malice and there is manifestly a total lack of bona fide on the part of the 1st Respondent as there are pending litigation (CA/Writ/170/2020 and CA/Writ /383/2020) instituted by the Petitioner in this Court.

Pending cases filed by the Petitioner in this Court.

The learned President's Counsel for the Petitioner submitted that the instant application is distinct from the other similar cases filed before this Court in respect of the issue where Governor has considered that the Chairman is deemed to have resigned from his post. The reason given by the learned President's Counsel is that the Petitioner has filed two applications namely CA/Writ/170/2020 and CA/Writ/383/2020 in which the constitutionality and the extent of the powers of a Governor under the present Constitution is being challenged and also that such issues are under consideration by another division of this Court. The Petitioner has annexed copies of the Petitions of both above cases to the Petition of this case. In CA/Writ/170/2020, the Petitioner seeks for an order in the nature of a writ of certiorari quashing a charge sheet issued against him whereas in CA/Writ/383/2020, the Petitioner seeks for a writ of certiorari quashing the appointment of the relevant retired judicial officer to inquire in to such allegations against the Petitioner. The Petitioner in the said application bearing No. CA/Writ/383/2020 claims that;

- a) The term of Sabaragamuwa Provincial council lapsed on or about 27.10.2017;
- b) Since 27.10.2017 there has been no Chief Minister, no board of Ministers and no Provincial Minister in-charge of the subject of Local Government in Sabaragamuwa province;

- c) There was no direction or notice issued by the Minister of the Sabaragamuwa Provincial Council in charge of the subject of the Local Government, on Petitioner or on the Mawanella Pradeshiya Sabha with respect to the Petitioner executing functions as the Chairman of the Mawanella Pradeshiya Sabha.
- d) The Governor appointing the retired judicial officer under section 185(2) of the Pradeshiyas Sabhas Act usurped the powers of the Minister of the Sabaragamuwa Provincial Council in charge of the subject of the Local Government.
- e) Sabaragamuwa Provincial Council has enacted Statute No. 6 of 1989 which specifically sets out the procedure to remove the Chairman of the Pradeshiya Sabha within the Province.

As per the order issued by Court in the application bearing No. CA/Writ/170/2020 on 17.09.2020 (*Vide* - 'P12'), a decision has been taken to issue notice on the Respondents based on the grounds that it was necessary for this Court to look in to the issue as to whether the Governor of the Sabaragamuwa Province enjoys legal powers to take disciplinary action against the Petitioner during a period where the respective Provincial Council remains dissolved.

On perusal of the copies of the Petition of the said CA/Writ/170/2020 and CA/Writ 383/2020, it emanates that the questions relating to those two cases are based on the disciplinary proceedings against the Petitioner under section 185 of the Act, which stipulates provisions for removal of Chairman, Members and also for dissolution of Pradeshiya Sabha.

The section 185 empowers the relevant Minister, if he is satisfied on the grounds mentioned in section 185 (1), to remove the Chairman from office or remove all or any of the Members from office or dissolve the Pradeshiya Sabha. In both the above applications, the Petitioner's argument is that at a time where the Provincial Councils have been dissolved, the powers vested on the relevant Minister under section 185 would not vest on the Governor of the Province.

However, what is material in the instant application is to interpret and identify the scope of the deeming provisions in section 169 of the Act. There is no discretion of the relevant Minister applicable in operation of the said section 169 and it is only the conduct of the Chairman of the Pradeshiya Sabha gives effect to the said provisions of section 169. The obligation of preparing the budget and the obligation of submitting the budget to the Council and the obligation of getting the budget passed by the Council is at all times with

the Chairman in terms of sections 168 & 169 of the Act. In the event when the budget is defeated the obligation of re-submission of the budget is also totally with the Chairman under section 169 of the Act.

By virtue of section 185 (2) of the Act, the relevant Minister has an obligation to appoint a retired judicial officer to inquire in to and report upon any of the matters in section 185 (1) before he makes an order to remove the Chairman or any of the Members. In my view, the scheme of the Act does not provide a mechanism to appoint a retired judicial officer to inquire in to the affairs relating to passing the budget by the Council. The questions in the instant application needs specifically an examination on the scope of the deeming provision of section 169 of the Act. Going by the dictionary meaning, a deeming provision is a section or clause of a Statute, Regulation or other legal instrument that states how something is to be treated or regarded.

In the literal sense of section 185, the relevant Minister takes steps to remove a Chairman or a Member if he is satisfied that there is sufficient proof in respect of the matters in section 185 (1). Minister has the discretion is executing his duties under section 185 (1) whereas the deeming provision in section 169 become operative upon the conduct of the Chairman in respect of presenting the budget and getting it approved.

In the circumstances, I am of the view that the said two cases which are pending has no bearing for the examination of the questions of the instant application and it is unreasonable to hold or block, until the final determination of those two cases, the smooth functioning of the whole Pradeshiya Sabha which has a bounded duty for its effectiveness towards the people of the respective area.

The contention of the Respondents in a nutshell

In the instant application also the learned Counsel for several Respondents took the same line of argument as advanced in the other connected cases. The main contention of Respondents in this case also 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 & CA/Writ/61/2021. Accordingly, the relevant Respondents moved that this application be dismissed in *limine*.

Thus, it is necessary to ascertain in this case also 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 scope of section 168 and 169 of the Act

The question emanates from this application is whether the Petitioner is entitled to declare the budget as duly adopted, under sections 168 & 169 of the Act, based on the alleged reason that there were no alternative proposals presented by Members (apart from the 3 amendments which were duly considered and defeated) and also on the basis that the budget or any portion of it has not been neither modified nor rejected. It is observed that the Petitioner has not afforded an opportunity for Members to take a vote on the budget and the budget he has tabled is relevant to a period after the first two years since the commencement of the office of the Pradeshiya Sabha.

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 Respondents in all above three cases. I hold that the reasoning given by me to arrive at the conclusion in those three cases are applicable in relation to the questions in the instant application as well. I may not reiterate all the reasons given by me in above three 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.

My findings in the above three cases were mainly based on the precedent set 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 set 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 here also 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. “

I have drawn my attention to a judgement of the Supreme Court of India and observed in the case CA/WRIT/ 31/2022 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.”

Reliefs

The Petitioner seeks, *inter alia*, for an order in the nature of a writ of Certiorari quashing the order made by the 1st Respondent Governor as contained in Gazette Extraordinary No. 2262/49 dated 15.01.2022 marked ‘P22’. The 1st Respondent by way of the said Gazette Notification has declared that the Petitioner is considered to have resigned from the post of Chairman with effect from 31.12.2021 due to failure to pass the budget prepared by the Petitioner under sections 168 & 169 of the Act.

The learned President's Counsel for the Petitioner argued that the 1st Respondent is devoid of power to have issued any order under section 223 of the Act read together with section 2 of the Provincial Councils (Consequential Provisions) Act No. 12 of 1989 as the said section 223 deals only with transitional arrangements of any unforeseen or special circumstances. This question also has been dealt with by His Lordship Justice Obeyesekere in CA/Writ/51/2021, analyzing the similar provisions in section 247 of the Urban Councils Ordinance together with section 2 of the said Act No. 12 of 1989. It is important to highlight the following paragraph in CA/Writ/51/2021;

“The learned President’s Counsel for the Petitioner submitted that in any event, the impugned Order ‘P22’ is ultra vires the powers conferred on the 1st Respondent by Section 247 of the Urban Councils Ordinance and Section 2 of the Provincial Councils (Consequential Provisions) Act No. 12 of 1989. To me, the series of events that followed the refusal by the Petitioner to place the re-submitted budget to a vote and have it passed by the Council reflects the desperation on the part of the Respondents to ensure that the provisions of Section 178A are complied with. Even if the argument of the learned President’s Counsel for the Petitioner is accepted, nothing flows from ‘P22’ for the reason that ‘P22’ is only an intimation of a factual position that prevailed as at that date.”

The Petitioner further seeks for an order in the nature of a writ of certiorari quashing the notice in the Gazette Extraordinary No. 2263/12 dated 13.01.2022. The Petitioner challenges the said order allegedly based on the provisions in section 66G of the Local Authorities Elections Ordinance (Cap. 262). His Lordship Justice Obeyesekere has resolved this issue also in CA/Writ/24/2021, observing that the Provincial Commissioner of Local Government is empowered to in terms of law to fill a vacancy in the office of Chairman of the Pradeshiya Sabha.

Therefore, I am not inclined to accept the propositions of the Petitioner based on section 223 of the Act and also on the section 66G of the Local Authorities Elections Ordinance (Cap. 262). 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, 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.

I need to reiterate that 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 am of the view that the questions raised by the Petitioner in the instant application have already been resolved in the aforesaid orders of this Court. Therefore, based on the arguability principles that should be adopted in respect of matters relating to issuance of notice in a juridical review application, I arrive at the conclusion that there is no arguable case or a *prima facie* case for this Court to issue formal notice on the Respondents in this application. Therefore, I proceed to refuse this application.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal