

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

In the matter of an Application for Writs of
Mandamus, Prohibition and *Certiorari* under
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

WRIT/295/2019

Edirisinghe Pedige Nimal Edirisinghe
No. B 62, Nikagolla,
Debathgama,
Kegalle.

Petitioner

Vs.

1. Sajith Wasantha Welgama,
Retaining Officer for Aranayake Pradeshiya
Sabha,
District Election Office,
Kegalle District,
Election Commission.
2. Commission of Elections,
Sri Sarana Mawatha,
Rajagiriya.
3. Saman Sri Ratnayake,
Commissioner-General,
Commission of Elections,
Sarana Mawatha,
Rajagiriya.
4. Mahinda Deshapriya,
Chairman,
Election Commission,
Sarana Mawatha,
Rajagiriya.

5. N.J.Abeysekera,
Commissioner,
Election Commission,
Sarana Mawatha,
Rajagiriya.
6. Prof.Samuel Ratnajeewa
Commissioner,
Election Commission,
Sarana Mawatha,
Rajagiriya.
7. Commissioner of Local Government,
Sabaragamuwa Province,
New Town,
Ratnapura.
8. Ethugalpedige Wimalawathi
Hathgampala,
Aranayake.
9. Hon.Attorney-General,
Attorney General's Department,
Colombo 12.

Respondents

Before: **M. T. Mohammed Laffar, J.**
S. U. B. Karalliyadde, J.

Counsel: Dr. Sunil Abeyratne with M. Kudakolowa for the
Petitioner.

Ms. A. Gajadeera, SC for the Respondents.

Argued on: 17-06-2022

Written submissions: 06-09-2022 (Petitioner)
29-09-2022 (Respondents)

Decided on: 03-11-2022

MOHAMMED LAFFAR, J.

The Petitioner by his Petition dated 12-07-2019, is seeking, *inter alia*, the following reliefs;

- (1.) A Writ of Certiorari to quash the decision of the 1st Respondent in P10, appointing the 8th Respondent as the representative Councilor of Debathgama Division No. 07 of Aranayake Pradeshiya Sabha.
- (2.) A Writ of Mandamus directing the 1st -6th Respondents, that the number of Councilors shall be restricted to 13, from whom succeeded for Divisions of the said Pradeshiya Sabha from the nominees of Sri-Lanka Podujana Party declared in P2, and to hold fresh elections allowing the voters of said Debathgama Division No. 7 to elect their representative Councilor for the Aranayake Pradesheeya Sabha. To fill the said vacancy declaring that the Petitioner who secured a number of votes from the United National Party next to Amarasinghe Arachchilage Ishara Madushani Amarasinghe for the same Division as the representative Councilor of Debathgama Division No. 07 of Aranayake Pradeshiya Sabha.
- (3.) A Writ of Prohibition, preventing the 7th Respondent from accepting the 8th Respondent as a Councilor of Aranayake Pradeshiya Sabha.

The Petitioner was a candidate, who contested for Division No.7, Debathgama of Aranayake Pradeshiya Sabha under the list of the United National Party (hereinafter referred to as the UNP) at the Local Government Elections held on 10-02-2018 to elect Councilors for the said Local Government Body of Kegalle District. The party which won the majority of the wards of the Aranayake Pradeshiya Sabha, namely the Sri-Lanka Podujana Peramuna (hereinafter referred to as the SLPP) was allocated 13 seats and one overhang seat. Therefore, the number of total seats allocated to SLPP was 14. The number of total seats allocated to UNP was 4. The Petitioner who contested under the UNP did not succeed and Amarasingha Arachchige Ishara Madushani Amarasingha, the candidate who contested Under SLPP for Division No.7, Debathgama of Aranayake Pradeshiya Sabha succeeded. Subsequently, the said Amarasingha Arachchige Ishara Madushani Amarasingha, was removed from her position as a Councilor, and the 8th Respondent, Ethugalpedige Wimalawathi a resident of Gantuna Division No. 14 who was a candidate under the SLPP was appointed for the said vacancy by the Government Gazette bearing No. 2129/64 dated 26-06-2019 marked as P10 by the 1st Respondent. In this scenario, the Petitioner states that;

1. The vacant position of the Councilor for the Debathgama Division shall be filled only by a candidate who contested for the same Division. The appointment of the 8th Respondent who did not contest for the

Debathgama Division is bad in law and the Petitioner who secured the number of votes next to the said Amarasingha Arachchige Ishara Madushani Amarasingha is entitled to be appointed to the said vacancy.

2. In these respects, the SLPP is entitled only to 13 seats.
3. A fresh election to be held only for the Debathgama Division 7 to elect the Councilor for that Division.

Section 66A (1) of the Local Authorities Elections Ordinance (as amended) spells out the manner in which the vacancies of local authorities should be filled, which reads thus;

“(1) Where the office of a member of a local authority falls vacant under the provisions of the Municipal Councils Ordinance (Chapter 252) Urban Councils Ordinance (Chapter 255) or the Pradeshiya Sabha Act, No. 15 of 1987, as the case may be, the returning officer appointed for the electoral area in which such local authority is situated, shall, where such vacancy is in respect of a member

(a) elected for any ward in that electoral area by ballot, request the secretary to the recognized political party or the leader of the independent group, as the case may be, to which such member belongs, to nominate within thirty days of the occurrence of the vacancy, any other candidate of the First Nomination Paper or the Additional Nomination Paper other than the candidates who have been elected or are not disqualified to be a member under section 9; as a member of local authority to fill that vacancy in the ward in which the vacancy has occurred; or

(b) returned under section 65A and 65AA of this Ordinance then, depending on whether the candidate whose office fell vacant is from a recognized political party or an independent group, call upon the secretary of the recognized political party or the leader of the independent group, as the case may be, to nominate within thirty days of the occurrence of the vacancy a candidate to fill such vacancy from candidates of the First Nomination Paper or the Additional Nomination Paper other than the candidates who have been elected or are not disqualified to be a member under section 9 in terms of; and paragraph (b) of subsection (1) of section 5 of the Municipal Councils Ordinance (Chapter 252) or paragraph (b) of subsection (1) of section 5 of the Urban Councils Ordinance (Chapter 255) or paragraph (b) of subsection (1) of section 4 of the Pradeshiya Sabha Act, No. 15 of 1987, as the case may be:

Provided that, where a vacancy occurs in the case of a woman member of a Local Authority, then such vacancy shall be filled only by the nomination of a woman candidate form the First Nomination Paper or the Additional

Nomination Paper other than the women candidates who have been elected or are not disqualified to be a member under section 9.”

In terms of section 66A (1) of the said Ordinance, it is abundantly clear that, when one of the seats of a local authority falls vacant, the Returning Officer appointed for the electoral area in which the local authority is situated shall inform the Secretary of the political party or the independent group to which that member belongs, to nominate a candidate from the first nomination paper or the additional nomination paper.

In the instant application, the 1st Respondent being the Returning officer informed the SLPP to nominate a candidate for the vacancy created by Amarasingha Arachchige Ishara Madushani Amarasingha. Accordingly, the Secretary of SLPP nominated Ethugalpedige Wimalawathi (8th Respondent) who was in the additional list of SLPP. Thereafter, the 8th Respondent was declared a member of the said Pradeshiya Sabha by P10.

Thus, it is apparent that the appointment of the 8th Respondent as Councilor of Aranayake Pradeshiya Sabha is strictly within the ambit of the provisions of the Local Authorities Elections Ordinance (as amended). It appears to this Court that, in terms of the provisions of the said Ordinance, the 1st Respondent is not bound to appoint a candidate from the same ward in which the vacancy has occurred.

Moreover, it is to be noted that, as provided by the proviso to section 66A (1) of the said Ordinance, when a vacancy occurs in a case of a woman member of a Local Authority, such vacancy **shall be filled only by the nomination of a woman candidate** from the first nomination paper or the additional list. In short, as per the proviso, where a vacancy occurs in the case of a woman member, only a woman candidate could fill that vacancy provided that such a woman candidate is not disqualified under section 9.

The 8th Respondent is a woman candidate from the SLPP whose name appears in the additional list. Hence, in terms of section 66A (1) of the said Ordinance, the 8th Respondent is entitled to be appointed in place of Amarasingha Arachchige Ishara Madushani Amarasingha who was also a woman candidate.

Admittedly, the SLPP won the majority of the wards of the Aranayake Pradeshiya Sabha, and accordingly, the SLPP was allocated 13 seats and one overhang seat, altogether 14 seats [Vide- section 65AA (1)]. In the event a seat of SLPP becomes vacant, a candidate from the same political party is to be appointed to fill such vacancy. The contention of the Petitioner who contested under the UNP, that he is eligible to be appointed to the vacancy on the basis that he secured the 2nd highest number of votes from the Debathgama Division is devoid of merits and misconceived in law. This Court is mindful of the fact that the law does not

permit the Respondents to restrict the number of Councilors of the SLPP to 13 when that party has already been allocated 14 seats in terms of the law. There is no impediment in law for the SLPP to appoint a candidate, from the original list or from the additional list, who is not from the Debathgama Division to represent the said Division.

Furthermore, there is no provision in the Ordinance to hold a by-election for a particular Ward, in the event a seat becomes vacant.

Besides, I do agree with the submissions of learned State Counsel for the Respondents that as the Petitioner has not challenged the document marked as P6 wherein the Chairman of the Elections Commission has allocated 14 seats to the SLPP, the Petitioner cannot now impugn the appointment of the 8th Respondent which has been done in accordance with the law, and cannot urge to restrict the seats of SLPP to 13.

The learned State Counsel for the Respondents raised several preliminary legal objections as to the maintainability of this application. As I have decided that the application is liable to be dismissed on merits, it is not necessary to deal with those preliminary legal objections.

For the foregoing reasons, the application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL