

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

**Court of Appeal Case Nos.**

**CA/WRT/395/19**

**CA/WRT/126/20**

**T.R.B. Mallawarachchi**

77/1,  
Sadujana Mawatha,  
Aththiligoda.

**Petitioner**

**Vs**

- 1. Southern Provincial Development  
Authority,**  
Baladaksha Mawatha,  
Galle.
- 2. Methsiri De Silva,**  
Chairman Southern Provincial Development  
Authority,  
Baladaksha Mawatha,  
Galle.
- 3. F.W. Rajapaksha**  
Member of the Board of Management  
Provincial Southern Development Authority,  
Baladaksha Mawatha,  
Galle.
- 4. W. Seelarathana De Silva**  
Member of the Board of Management

Southern Provincial  
Development Authority,  
Baladaksha Mawatha,  
Galle.

**5. N.D. Susantha Lal**

Member of the Board of Management  
Southern Provincial Development Authority,  
Baladaksha Mawatha,  
Galle.

**6. A.M.Champika Niranjali**

Member of the Board of Management  
Southern Provincial Development Authority,  
Baladaksha Mawatha,  
Galle.

**7. Disaru Disanayaka**

Member of the Board of Management  
Southern Provincial Development Authority,  
Baladaksha Mawatha,  
Galle.

**8. Ramya Shri Wijethunga**

Member of the Board of Management  
Southern Provincial Development Authority,  
Baladaksha Mawatha,  
Galle.

**9. Dammika Lokuge**

Member of the Board of Management  
Southern Provincial Development Authority,  
Baladaksha Mawatha,  
Galle.

**10. T. Nadugala**

Member of the Board of Management  
Southern Provincial Development Authority,  
Baladaksha Mawatha,  
Galle.

**11. Siril Dharmawardana**

Member of the Board of Management  
Southern Provincial Development Authority,  
Baladaksha Mawatha,  
Galle.

**12. S.P. Widura Prasanna**

Member of the Board of Management  
Southern Provincial Development Authority,  
Baladaksha Mawatha,  
Galle.

**13. Chandrika Malepathirana**

Acting Director General  
Southern Provincial Development Authority,  
Baladaksha Mawatha,  
Galle.

**14. K.V.D.S.N Kumara**

Former Chairman  
Southern Provincial Development Authority,  
Baladaksha Mawatha,  
Galle.

**15. Rajitha Keerthi Tennakoon**

Former Governor  
Southern Province and presently holding the  
office of Governor, Central Province  
Governor's Office  
P.O. Box 06  
Kandy

**16. Hemal Gunasekara**

Governor  
Southern Province Governor's Office  
Lower Dickson Road,  
Galle

**Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**  
**S. U. B. KARALLIYADDE, J.**

Counsel: Sanjeewa Jayawardane PC, with Ramali Meepagoda and Rukshan Senadeera for the Petitioner in CA/WRT/395/19 & CA/WRT/126/20.  
Saman Galapaththi with Isuru Perera for the Respondents in CA/WRT/395/19.  
Manohara Jayasinghe, DSG with Medhaka Fernando SC for the Respondents in CA/WRT/126/20.

Argued on: 13.06.2023

Written Submissions on: 24.12.2023 by the Petitioner  
26.09.2023 by the Respondents

Decided on: 09.01.2024

**MOHAMMED LAFFAR, J.**

The Petitioner in these Applications has invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution seeking the discretionary remedies of Writs of Certiorari, Mandamus and Prohibition, which reads *inter-alia* as follows;

1. A Writ of Certiorari quashing the interdiction of the Petitioner from service as the Director General of Southern Provincial Development Authority by letter dated 04.07.2019 (P22).
2. A Writ of Mandamus directing the 1<sup>st</sup> to 12<sup>th</sup> Respondents to re-instate the Petitioner to the said post.
3. A Writ of Certiorari quashing the decision, appointing the 13<sup>th</sup> Respondent, in lieu of the Petitioner, as the Acting Director General of the Southern Provincial Development Authority.

4. A Writ of Certiorari quashing any decisions to hold an inquiry against the Petitioner.
5. A Writ of Certiorari quashing the charge sheet dated 08-06-2020 (P27).
6. A Writ of Certiorari quashing the letter dated 08-06-2020 (P26).
7. A Writ of Certiorari quashing the preliminary inquiry report dated 10.12.2019 prepared by the 20<sup>th</sup> and 21<sup>st</sup> Respondents (P25).
8. A Writ of Certiorari quashing the decision of the 19<sup>th</sup> Respondent to appoint the 20<sup>th</sup> and 21<sup>st</sup> Respondents to conduct a preliminary inquiry against the Petitioner.
9. A Writ of Mandamus directing the 1<sup>st</sup> to 16<sup>th</sup> Respondents to re-instate the Petitioner.
10. A Writ of Prohibition restraining the Respondents from conducting a preliminary inquiry against the Petitioner.

From 01.06.2016 the Petitioner has been functioning as the Director General of the Southern Development Authority. According to the internal Audit report, the Petitioner had committed serious financial misconduct by misusing State funds and thereby violating the Provincial Financial Regulations. Consequently, the 19<sup>th</sup> Respondent, the Chief Secretary of the Southern Province, took steps to have a preliminary inquiry conducted through the Chief Secretariat Audit Division. The inquiry report dated 24.06.2019 is produced as R13. Accordingly, by letter dated 04.07.2019 (P22), the Petitioner was interdicted from services by the Governor of the Southern Province. The Preliminary inquiry report dated 10-12-2019 marked as P25 was submitted by the 20<sup>th</sup> and 21<sup>st</sup> Respondent, and accordingly the Petitioner has been charge sheeted on 08.06.2020 (P27).

The contention of the learned President's Counsel for the Petitioner is that the Petitioner, Director General of the Southern Provincial Development Authority (SPDA), is not deemed to be a Public Officer or does not fall under the category of the Provincial Public Service, and the Governor or the Public Service Commission has no power whatsoever, regarding the appointment, transfer, termination, interdiction or disciplinary control regarding the said post. In terms of the provisions of the SPDA Statute No. 01 of 1995, the 1<sup>st</sup> Respondent, SPDA is vested with disciplinary control over the Petitioner. Hence, the said interdiction and further steps taken thereafter by the Governor are *ultra-vires*, arbitrary, unfair, capricious, unreasonable and irrational.

The contention of the learned Deputy Solicitor General appearing for the Respondents is that the Southern Provincial Council stood dissolved on 01.04.2019 and the Office of the Chief Minister of the Province became defunct. The Board of Management of the 1<sup>st</sup> Respondent was not constituted and there was no subject Minister assigned to oversee the 1<sup>st</sup> Respondent Authority. In this scenario, under Articles 154C and 154F of the Constitution of the Democratic Socialist Republic of Sri Lanka, the Governor is empowered to issue the letter of interdiction (P22) to the Petitioner. However, the learned DSG submitted that the impugned charge sheet (P27) was issued under the Authority of the Board of Management of the 1<sup>st</sup> Respondent.

Moreover, the learned DSG took up the position that under Article 125 of the Constitution, the legal issue of whether the Governor was empowered to issue the letter of interdiction under Articles 154C and 154F of the Constitution is to be referred to the Supreme Court and this Court has no jurisdiction to determine the said question of law.

Undisputedly, in terms of Section 24 of the SPDA statute, the Board of Management of the SPDA is empowered to appoint, terminate, interdict, and disciplinary control of employees of the 1<sup>st</sup> Respondent Authority. As a result of the dissolution of the Southern Provincial Council on 01.04.2019, the Office of the Chief Minister of the Province became defunct, the Board of Management of the 1<sup>st</sup> Respondent was not constituted and there was no Subject Minister assigned to oversee the 1<sup>st</sup> Respondent Authority. As such, the 1<sup>st</sup> Respondent was not in a position to take disciplinary measures against the Petitioner in respect of the alleged serious financial misconduct and misuse of state funds by the latter. The Internal Audit Report (R1) recommended that steps be taken against the Petitioner as expeditiously as possible against the Petitioner. In those circumstances, the Governor had taken steps to issue the letter of interdiction (P22) and directed to hold a preliminary inquiry on the said Audit Report.

The Constitution envisages the Governor of a Province playing an overarching supervisory role to ensure the due administration of the affairs of a province. Article 154B (11) of the Constitution imposes an obligation on the Chief Minister to communicate to the Governor all decisions of the Board of Ministers relating to the administration of the affairs of the province. The Governor is also empowered to call for information pertaining to the administration of the affairs of the province from the Chief Minister. Article 154B (11) is reproduced as follows;

*“ It shall be the duty of the Chief Minister of every Province –*

*(a) to communicate to the Governor of the Province all decisions of the Board of Ministers relating to the administration of the affairs of the Province and the proposals for legislation ;*

*(b) to furnish such information relating to the administration of the affairs of the Province and proposals for legislation as the Governor may call for ; and.....”*

Furthermore, under Section 27A of the Provincial Councils Act, No. 42 of 1987 (as amended), the Governor is statutorily reposed with certain residuary powers to ensure that the due administration of the affairs of the Province continues unhindered in a situation where the relevant Provincial Council has been dissolved, which reads thus;

*“Where a Provincial Council has been dissolved before the annual financial statement for the financial year has been approved, or a Provincial Council ceases, for any other reason to function, the Governor may, notwithstanding anything in the preceding provisions of this Part, authorise the issue from the Provincial Fund, and the expenditure of such Funds, as he may consider necessary for the administration of the province, until the expiry of a period of three months from the date on which the new Provincial Council is summoned to meet or the date on which the Provincial Council resumes functioning.”*

The Court's perspective is that the Governor, utilizing his discretionary executive authority under Article 154C of the Constitution, has taken steps to suspend the Petitioner and initiate a preliminary inquiry. This decision stems from an unprecedented situation where there is no operational Provincial Council, Chief Minister, Board of Ministers, or Board of Management of the Southern Provincial Development Authority. The Governor's actions are based on the need to address the unique circumstances created by the absence of these governing bodies at the provincial level. Article 154C reads thus;



*“Executive power extending to the matters with respect to which a Provincial Council has power to make statutes shall be exercised by the Governor of the Province for which that Provincial Council is established, either directly or through Ministers of the Board of Ministers, or through officers subordinate to him, in accordance with Article 154F.”*

Article 154F of the Constitution reads thus;

*“There shall be a Board of Ministers with the Chief Minister at the head and not more than four other Ministers to aid and advise the Governor of a Province in the exercise of his functions. The Governor shall, in the exercise of his functions, act in accordance with such advice, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.”*

In the instant Application, when the Audit Report (R1) was produced to the Governor stating that the Petitioner has been involved in serious financial irregularities, the Governor in terms of the residuary executive powers vested in him interdicted the Petitioner and directed to commence a preliminary inquiry against the Petitioner for the due administration of the Southern Province Development Authority which is within the purview of the Constitution and the Provincial Councils Act, No. 42 of 1987 (as amended).

This Court is mindful of the fact that the charge sheet marked as P27 has been issued under the authority of the Board of Management of the 1<sup>st</sup> Respondent, and therefore, challenging the charge sheet on the basis that the same was issued by the Governor is erroneous.

The learned President's Counsel for the Petitioner submits that the Governor exercising his residuary executive powers under Articles 154C and 154F of the Constitution is erroneous and misconceived in law. Accordingly, it is clear that the central question to be determined by this Court is whether the Governor can interdict the Petitioner with the powers vested in him by the Constitution. Under Article 125 of the Constitution, this Court has no jurisdiction to interpret the Constitution which is exclusively vested in the Supreme Court. Article 125 reads as follows;

*“The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the interpretation of the Constitution and accordingly, whenever any such question arises in the course of any proceedings in any other court or tribunal or other institution empowered by law to administer justice or to exercise judicial or quasi-judicial functions, such question shall forthwith be referred to the Supreme Court for determination. The Supreme Court may direct that further proceedings be stayed pending the determination of such question.”*

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

*Application dismissed. No costs.*

**JUDGE OF THE COURT OF APPEAL**

**S. U. B. KARALLIYADDE, J.**

*I agree.*

**JUDGE OF THE COURT OF APPEAL**