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 Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 227/2012

D.M. Gunasekara Bandara,
379/5A, Tharuna Seva Sabhawa Road,
Makola South, Makola.

PETITIONER

Vs.

1. Hon. Justice N.E. Dissanayake,
   Chairman.

2. Edmund Jayasuriya,
   Member.

2A. G.P. Abeykeerthi,
   Member.

   1st – 2A Respondents at
   Administrative Appeals Tribunal,
   No. 35, Silva Lane, Dharmapala Place,
   Rajagiriya.

3. Secretary,
   Ministry of Public Administration and Home Affairs, Colombo 7.

4. Secretary,
   Public Service Commission,
   Colombo 5.

RESPONDENTS

Before:	**Arjuna Obeyesekere, J**
Counsel:	Shantha Jayawardena with Chamara Nanayakkarawasam and Hiranya Damunupola for the Petitioner Milinda Gunatilake, Senior Deputy Solicitor General for the Respondents
Written Submissions:	Tendered on behalf of the Petitioner on 14th September 2018, 23rd May 2019 and 15th November 2019. Tendered on behalf of the Respondents on 2nd May 2019 and 10th June 2020
Decided on:	7th September 2020

Arjuna Obeyesekere, J

When this matter was taken up for argument on 12th July 2018, the learned Counsel for the parties moved that this Court deliver its judgment on the written submissions that would be tendered by the parties.

The Petitioner has filed this application, seeking *inter alia* a Writ of Certiorari to quash the Order of the Administrative Appeals Tribunal (the Tribunal / AAT) marked '**P21**', and a Writ of Mandamus directing the Administrative Appeals Tribunal to direct the Public Service Commission to grant the Petitioner marks for seniority calculated from 1st July 1989, and thereafter promote the Petitioner to Class II Grade II of the Sri Lanka Administrative Service.

It is admitted between the parties that the Petitioner had joined the Public Service in July 1979 as a Clerical Officer. Having sat the limited competitive examination conducted in 1990 to select officers for appointment to the Supra Grade of the General Clerical Service, the Petitioner had been appointed with effect from 1st June 1992 to the General Clerical Service – Supra Grade of the Uva Province, and attached to the Agriculture Ministry of the Uva Provincial Council by letter marked '**P5**'.

In 2005, the Ministry of Public Administration had issued Combined Services Circular No. 3/2005, marked '**P9**', calling for applications from persons who had the qualifications stipulated therein, for appointment to Class II Grade II of the Sri Lanka Administrative Service. The Petitioner, who possessed the qualifications stipulated therein, had sat the written examination that was held in terms of '**P9**' and had secured 114 marks out of 200 at the said examination. The Petitioner had secured a further 47.50 marks for seniority, thus obtaining an aggregate of 161.50 marks, whereas the cut off mark for selection was 169. The Petitioner had disputed the marks given for seniority, and had claimed that he should have received additional marks on the basis that his appointment to Supra Grade of the General Clerical Service had been backdated to 1st July 1989, from the original date of 1st June 1992 referred to in '**P5**'.

The Petitioner's appeal to the Public Service Commission seeking the allocation of marks for the period 1st July 1989 – 1st June 1992 had been rejected by letter dated 22nd November 2011 marked '**P14**'. The Petitioner had thereafter appealed to the Administrative Appeals Tribunal, which, having afforded the Petitioner a hearing, had upheld the decision of the Public Service Commission, and dismissed the appeal by its Order marked '**P21**'.

The learned Counsel for the Petitioner has challenged the Order '**P21**' on two principal grounds. The first is that the Administrative Appeals Tribunal was not properly constituted at the time '**P21**' was delivered, and hence '**P21**' is a nullity. The second ground is that '**P21**' is irrational and unreasonable, in that the Administrative Appeals Tribunal has failed to consider the question that was presented to it.

This Court shall now consider the facts relating to the first ground.

It is not in dispute that the appeal of the Petitioner to the Administrative Appeals Tribunal had been made on 21st December 2011, and that the appeal was mentioned before the Chairman and another member of the Tribunal on 14th February 2012 – vide '**P17**'. On that date, the hearing had been fixed for 2nd May 2012. The proceedings of 2nd May 2012, marked '**P18**' indicate the following:

(a) The appeal was taken up for hearing before the Administrative Appeals Tribunal consisting of the Chairman and the other two members;

(b) Submissions were concluded;

(c) The parties were directed to tender written submissions; and

(d) The matter fixed for Order on 26th June 2012.

The Order marked '**P21**' had been delivered on 26th June 2012. However, it appears from '**P21**' that on the date that the Order was delivered, only the Chairman and one member of the Administrative Appeals Tribunal had sat.

The position that the Administrative Appeals Tribunal consisted of three members at the time the appeal was heard has been admitted in paragraph 19 of the petition. In paragraph 25 of his petition, the Petitioner states that the Order '**P21**' has been made by two members, namely its Chairman and one member, and that '**P21**' is not valid in terms of the Act. In the affidavit filed before this Court by the Chairman of the Administrative Appeals Tribunal, he has admitted that '*at the time of commencing the hearing of the Petitioners Appeal before the Administrative Appeals Tribunal, Justice A. Somawansa was a member of the Tribunal. However, Justice Somawansa retired prior to the conclusion of the Petitioner's Appeal*.'[1] It is admitted by the Respondents that due to this reason, the Order '**P21**' has only been signed by the Chairman and one other member.[2]

The issue that this Court must therefore determine is whether in the absence of the third member, '**P21**' is an Order of the Administrative Appeals Tribunal and valid in terms of the law.

The starting point of this discussion is Article 59 of the Constitution, which reads as follows:

[1] Vide paragraph 8

[2] Although the copy of 'P21' that has been filed of record with the petition contains only the signature of the Chairman, the learned Senior Deputy Solicitor General has filed a copy of 'P21' which contains the signature of the Chairman and the 2nd Respondent, who was other member of the Administrative Appeals Tribunal at the time 'P21' was delivered.

"(1) There shall be an Administrative Appeals Tribunal appointed by the Judicial Service Commission.

(2) The Administrative Appeals Tribunal shall have the power to alter, vary or rescind any order or decision made by the Commission.[3]

(3) The constitution, powers and procedure of such Tribunal, including the time limits for the preferring of appeals, shall be provided for by law."

The Administrative Appeals Tribunal Act No. 4 of 2002 (the AAT Act) was enacted to:

(a) provide for the constitution of the Administrative Appeals Tribunal;

(b) specify the powers of such Tribunal and the procedure to be adhered to by such Tribunal in respect of appeals.

Section 2(1) of the Act provides that, "***The Administrative Appeals Tribunal*** *established under paragraph (1) of Article 59 of the Constitution****, shall consist of three members*** *appointed by the Judicial Service Commission, from among persons who have had over twenty years of experience as a public officer or ten years of experience in the legal profession, one of whom shall be appointed it's Chairman*."

Section 3 of the Act reads as follows:

*"**The Tribunal shall** have the power to hear and determine any appeal preferred to it from any order or decision made by:*

(a) the Public Service Commission in the exercise of its powers under Chapter IX of the Constitution;

(b) the National Police Commission in the exercise of its powers under Chapter XVIIIA of the Constitution."

[3] Reference to the Commission is to the Public Service Commission and the National Police Commission.

In terms of Section 7 of the Act, "***The Tribunal shall hear*** *and finally dispose of any appeal preferred to it under this Act, within a period of two months from the date of receipt of such appeal*."

Section 8(1) provides as follows:

> "***The decision of the Tribunal*** *shall be under the hand of the Chairman and shall be communicated in writing to the Public Service Commission or to the National Police Commission, as the case may be, to the public officer or the police officer who preferred the appeal and to any other public officer or police officer who was notified by the Tribunal under paragraph (d) of section 6.* ***The decision of the Tribunal shall, be the decision of the majority***."

Having carefully considered the above provisions of the Act, this Court is of the following view:

a) The Administrative Appeals Tribunal shall consist of three members who shall be appointed by the Judicial Service Commission;

b) The Act does not contain any provision relating to the quorum of the Administrative Appeals Tribunal;

c) In the absence of any provision relating to quorum in the Act, the power to hear and determine an appeal preferred against an order of either of the Commissions is vested with all three members and, such power shall be exercised by all three members, sitting together;

d) An appeal made to it shall be heard and finally disposed of by the Tribunal consisting of all three members;

e) Section 8(1) makes it abundantly clear that the decision must be taken by all three members, even though the decision need not be unanimous, and hence, the reference to the decision of the Tribunal being the decision of the majority;

f) The decision of the Tribunal, *which shall be read as the decision of all three members*, shall be under the hand of the Chairman.

This Court must reiterate that in its view, the most important factor is that the AAT Act does not provide for a quorum, and that the rest of the provisions of the AAT Act must be read in the light of such fact.

The identical situation to that of this application arose in **V.P.M.G.R. Shantha Kumara vs Chairman, Public Service Commission and Others**[4] where this Court held that, "*it is clear that the Tribunal did not consist of three members as required by Section 2 of Act No. 4 of 2002 at the time the order was made.*"

The learned Counsel for the Petitioner has drawn the attention of this Court to the judgment of the Supreme Court in **Paskaralingam by his Attorney-at-Law v. P.R.P Perera and Others**[5] in support of his first argument. This case involved a decision made by a Special Presidential Commission of Inquiry appointed in terms of the Special Presidential Commissions of Inquiry Law No. 7 of 1978, as amended (the SPC Law). Section 2 thereof provides that whenever it appears to the President to be necessary that an inquiry should be held and information obtained with regard to any of the matters specified in paragraphs (a) – (c) of Section 2, the President may, by warrant under the Public Seal of the Republic of Sri Lanka, establish a Special Presidential Commission of Inquiry consisting of such member or members. Thus, it is clear that the number of members of the Commission has not been stipulated by the said Law, and that the Commission can consist of one or more members.

In terms of Section 3(1) of the SPC Law, "*Where any member of a commission dies, or resigns, or desires to be discharged from the performance of his duties in respect of the whole or part of an inquiry, or refuses or becomes unable to act, the President may appoint a new member in his place for the whole or any part of such inquiry*."

Although the SPC Law does not specify a quorum, Section 3(2) stipulates that, "***Until such appointment is made**, the inquiry may continue before the remaining members of the Commission, and if no such appointment is made, the inquiry shall continue and be concluded before the remaining members of the Commission*."

[4] CA (Writ) Application No. 350/2012 CA Minutes of 16th June 2015.
[5] [1998] 2 Sri LR 169

The President, by Warrant dated 2nd February 1995 had appointed three persons as members of a Special Presidential Commission and further appointed the 1st respondent to be the Chairman of the said Commission. The inquiry into the allegations against the petitioner had commenced on 20th April 1995, had lasted 22 days inclusive of 4 preliminary dates of inquiry and was concluded on 19th December 1996. The 3rd respondent had not participated in the hearings that took place after 12th November 1996 due to his serious health condition. Although the 3rd respondent tendered his resignation, he had been informed that he can continue to remain a member of the Commission and take part in its proceedings again when his health permits. In effect, the resignation of the 3rd respondent had not been accepted, the appointment of a new member did not arise and the 3rd respondent continued as a member of the Commission. The Commission had however proceeded in the absence of the 3rd respondent, and made an order. The question that arose for the consideration of the Supreme Court was whether the findings against the petitioner were valid as the Commission did not comprise of all its members and the decision had only been signed by its Chairman and one other member.

Justice Wijetunga, who delivered the majority decision of the Court, held as follows:

> *"Section 3(2), in my view, clearly vests the discretion with the President as to whether a new member should be appointed or not. There must, therefore, be a manifestation of the President's intention not to appoint a new member, (and) for the inquiry to be continued and concluded before the remaining members of the Commission. The discretion of the remaining members of the Commission whether to continue the inquiry until such appointment is made is obviously limited to the interim period between the occurrence of one of the five situations mentioned in section 3(1) and the President's decision as to whether a new member would be appointed. I cannot, therefore, see how section 3(2) can operate independently of section 3(1). Section 2(1) empowers the President to decide on the number of members that would constitute the Commission. She may well decide not to appoint a new member even if one of the five situations aforesaid has taken place.* ***Then and then alone can the remaining members of the Commission continue and conclude the inquiry****. But, the factual situation with regard*

to the present matter is that none of the five events specified in section 3(1) had actually occurred."

The majority judgment of the Supreme Court went onto hold as follows:

"The President as the appointing authority, the petitioner as the party aggrieved by the findings and recommendations of the Commission, Parliament which under Article 81 of the Constitution is empowered to give effect to the recommendation that the petitioner be made subject to civic disability, and last but not least, the 'People' in whom 'Sovereignty' is vested by Article 3 of the Constitution ***have a right to know the views of the 3rd respondent in regard to this matter, as he continued to be a member of the Commission. Though undoubtedly such a decision could be made by a majority of the members of the Commission****, I see no warrant in law for a member of the Commission to refrain from expressing his views one way or the other, while continuing to be a member of such Commission. It is immaterial whether by the 3rd respondent's participation in the decision-making process, the conclusions reached and the recommendations made by the other Commissioners could have been different, or whether their collective thinking could have tilted the scales differently.* ***What is repugnant to the principles of natural justice is that only two out of the three Commissioners who held the inquiry chose to express their views. Such a report cannot, in my view, be considered a report of the Commission, as contemplated by law****."*

The facts in **Wijayapala Mendis v. P.R.P Perera and Others**[6] were similar to **Paskaralingam's** case as the findings against the petitioner had been reached only by two members. Justice Mark Fernando, having referred to **Paskaralingam's** case stated as follows:

"The audi alteram partem rule does not merely entitle a party to a purely formal opportunity of placing his case before a tribunal. ***Natural justice would be devalued if the tribunal - and, indeed, every member of the tribunal - does not consider the evidence and the submissions****; and evaluate it properly and not in haste; and, in general, give reasons for its conclusions.*"

[6] [1999] 2 Sri LR 110.

While reiterating that the SPC Law does not specify a quorum for a Commission appointed in terms of the said Law, it must be noted that the Supreme Court in **Paskaralingam** reached the above conclusion in spite of the SPC Law making provision for the remaining members of the Commission to hear and determine a matter where one of the situations set out in Section 3(1) arises, and until the appointment of a replacement. The situation under the AAT Act is however more demanding and stringent, in that it does not provide for the remaining members to continue to hear an appeal, if the third member is unable to sit, nor does the AAT Act provide for a quorum, thus confirming the view of this Court that what is meant by the Administrative Appeals Tribunal is its Chairman and two members who must all participate in the decision making process. Anything short of the involvement of the three members would be invalid.

The learned Senior Deputy Solicitor General appearing for the Respondents sought to distinguish the facts of this application from **Paskaralingam** on the basis that the third member could not sign as he had retired. While that may be so, it is the view of this Court that in the absence of a quorum provision, the AAT Act makes it clear that the Tribunal shall mean all three members, and where it is not disputed that the third member did not subscribe to the decision in '**P21**', the reason for not doing so becomes immaterial. Furthermore, this Court cannot ignore the above findings of the Supreme Court that, '*Natural justice would be devalued if the tribunal - and, indeed, every member of the tribunal - does not consider the evidence and the submissions.*'

The cumulative effect of the above two judgments of the Supreme Court is that where an administrative body consists of multiple members, and in the absence of (a) a quorum, and (b) a provision similar to Section 3(2) of the SPC Law permitting the continuation of the sittings, all members must sit, and all members must take the decision, for it to become a decision of that administrative body. The only leeway in this instance is that the decision of the AAT need not be unanimous and a majority decision would suffice.

The learned Senior Deputy Solicitor General drew the attention of this Court to the judgment of this Court in **H.P.G. Hewage, Acquiring Officer v. A.E. Perera**,[7] which had distinguished the judgment of the Supreme Court in **Paskaralingam**. The issue

[7] CA Application No. 1 of 2001; CA Minutes of 30th August 2004.

that arose in that case was whether the decision of the Board of Review appointed in terms of the Land Acquisition Act, as amended (the LA Act) consisting of its Vice Chairman, and four other members, was valid in law in the absence of the signature of two members of the Board.

Section 19(1) of the LA Act provides for a Board of Review consisting of sixteen members who shall be appointed from time to time by the President of Sri Lanka for the purpose of hearing appeals against decisions made by an Acquiring Officer under Section 17. In terms of Section 19(2), eight members of the Board shall be Attorneys-at-Law while the other eight members should be persons having adequate knowledge of valuation of land. Section 24(1) of the LA Act provides that every appeal to the Board shall be heard at an ordinary meeting of the Board.

This Court, having considered the above provisions, observed in **Hewage** that *"The decision of this Court on the question whether the failure of two members of the Board to sign the Order will vitiate such Order, will revolve around Sections 21 and 25 of the Act which respectively provide for meetings of the Board of Review and the manner of making decisions on appeals heard at such meetings."*

Section 21 reads as follows:

> *"(1) The Secretary shall, under the direction of the Chairman of the Board, convene meetings of the Board at which appeals are to be heard.*
>
> *(2) The Chairman or Vice-Chairman, two lawyer members and two valuer members of the Board shall be summoned to an ordinary meeting of the Board. Such lawyer members and such valuer members shall be chosen by lot by the secretary.* ***The quorum for an ordinary meeting of the Board shall be three members of whom at least one shall be a valuer member****.*
>
> *(3) All the members of the Board shall be summoned to an extraordinary meeting of the Board. The quorum for an extraordinary meeting of the Board shall be two lawyer members and three valuer members."*

Having considered the above provisions, this Court held as follows:

"*It is common ground that the order of the Board of Review was made at an ordinary meeting of the Board. Learned Counsel for the appellant expressed some doubts as to whether all five members of the Board who were summoned for the meeting of the Board at which the appeal was heard, and whose names appear in the concluding part of the Order quoted above, in fact, sat and heard the appeal in question. However, it was strenuously contended by the learned Counsel for the appellant that the said Order is invalid as it has not been signed by all the members of the Board who heard the appeal at the ordinary meeting of the Board. At the outset,* ***it must be observed that if only the Vice Chairman and the other two members of the Board who have in fact signed the Order had sat and heard the appeal in question, the legality of the Order of the Board cannot be challenged*** *on the ground that the other two members summoned for the meeting did not hear the appeal and signed the Order of the Board. As pointed out by learned President's Counsel for the respondent, although in terms of Section 21(2) of the Act, the Chairman or Vice Chairman of the Board along with two lawyer members and two valuer members have to be summoned for an ordinary meeting of the Board for hearing an appeal, it is not necessary that all five persons so summoned should attend the meeting to hear an appeal, as Section 21(2) expressly provides that "the quorum for an ordinary meeting of the Board shall be three members of whom at least one, shall be a valuer member." It is undisputable that at least one person who has signed the award is a valuer and* ***it is also common ground that the quorum requirement of Section 21(2) has been satisfied****.* ***It will follow that if the two members who have not signed the Order also did not hear the appeal when it was taken up before the Board of Review, the Order of the Board is perfectly valid****.*

The position is different if all five members summoned for the meeting had sat and heard the appeal, but only three of them had signed the Order. Indeed, it is apparent from the record that all the five members of the board summoned for the meeting of the Board which heard the appeal were in fact present at the hearing of the appeal.

Considering the manner in which the Order has been prepared for signature, it is reasonable to assume that it was intended to be signed by all five members of

the Board who heard the case. In the circumstances, the learned Counsel for the Appellant, has submitted that in the eyes of the law, the Order in question is not the Order of the Land Acquisition Board of Review insofar as an Order of the said Board has to be signed by all five members in terms of Section 25(1) read with Sections 21(2) and 24(1) of the Act.

In this connection, it is relevant to note that Section 25(1) provides that:

> *'The decision made at a meeting of the Board on an appeal heard at that meeting shall be deemed to be the decision of the Board on that appeal.'*

Section 25(2) of the Act further provides that:

> *'Where the members of the Board who hear an appeal disagree with regard to the decision on the appeal, the decision of the majority of them shall be the decision of the Board on the appeal, and, where the members are equally divided in their opinion, the decision supported by the Chairman of the meeting at which the appeal is heard shall be the decision of the Board on the appeal.'*

The reason for the failure of the two members in question not to sign the Order is not clear at all. The cause for the omission may very well be some administrative lapse on the part of the Secretary to the Board, or may have arisen as a result of the inability of the two members to agree with the decision of the majority of the Board. The latter alternative is most unlikely in view of the healthy practice of members of the Board writing dissenting orders where they are not in agreement with the majority of members of the Board of Review. Whatever may be the explanation for the failure of the two members in question to sign the Order, it gives rise to the nice little question as to whether an Order signed by only three members of the Board is a valid Order of the Board."

This Court thereafter referred to the judgment in **Paskaralingam's** case and expressed its disinclination to follow the said judgment for three reasons. Firstly because that application was a writ application as opposed to what was before this Court being an appeal arising from an award made by the Acquiring Officer. Secondly

due to the appellant having acquiesced in the position that the order delivered is an order of the Board of Review. The final reason is re-produced below:

> *"Finally, it is the considered view of this Court that the express provisions of Section 25(2) of the Land Acquisition Act strongly militate against the arguments placed before this Court by learned Counsel for the Appellant.* ***As the three members of the Board who have signed the Order in question constitute the quorum for an ordinary meeting of the Board****, as is specified in Section 21(2) of the Act, the Order may be deemed to be the decision of the Land Acquisition Board of Review because Section 25(2) of the Act has expressly provided that even "where the members of the Board who hear an appeal disagree with regard to a decision on the appeal, the decision of the majority of them shall be the decision of the board on the appeal."*
>
> *While it is always possible that the views of the members of the Board who did not sign the Order appealed against could have been different from the decision of the majority, and* ***their collective thinking could have tilted the scales differently****, in an era in which there is a public outcry against laws delays which can only be mitigated by shifting the focus slightly from judicial perfection to judicial pragmatism, this Court is inclined to hold that the Order pronounced on 5th January 2001 should be regarded as the decision of the Board of Review*."

Thus, the factor that influenced this Court in its final decision was the fact that the Board had the necessary quorum to arrive at its final determination whereas there was no such provision in the SPC Law. This however is the distinguishing feature between this application, and **Hewage**. While this Court is conscious of the fact that this application has been filed in 2012, and is in agreement with the view expressed by Justice Saleem Marsoof, P.C./PCA (as he then was) in **Hewage** that this Court must be pragmatic at all times, this Court cannot ignore the mandatory provisions of the AAT Act.

The learned Senior Deputy Solicitor General also drew the attention of this Court to **R vs Greater Manchester Valuation Panel, *Ex parte* Shell Chemicals U.K. Limited**.[8] That case involved a decision of the Local Valuation Court, which consisted of its

[8] [1982] 1 Q.B. 255.

Chairman and two members. The hearings before the said Court had begun on 22nd November 1977, and after 42 days of hearing had concluded on 2nd February 1979. The evidence that was placed before the High Court was that the three members of the Valuation Court had met on several dates to discuss the issues raised by the parties, and that all three members had reached agreement (a) on the date of valuation, (b) which of the valuations was to be preferred, and (c) the net annual value. A carbon copy of the above conclusions reached at the said discussions was available. However, the Chairman of the said Court had passed away on 13th February 1980, at which point the greater part of the reasons of the decision of the Valuation Court had been written. The procedure at the hearing of an appeal by the Valuation Court was governed by the Rating Appeals (Local Valuation Courts) Regulations 1956, in terms of which the '*decision of the majority of the Court shall be the decision of the Court.*' After the death of the Chairman, the other two members had finalised the decision reached by all three members prior to the death of the Chairman and had announced the decision of the Court.

Aggrieved by the decision of the said two members to announce the decision notwithstanding the passing away of the Chairman, the ratepayer sought a Writ of Certiorari to quash the said decision. One of the arguments advanced on behalf of the ratepayer was that, '*a decision by two members of a Court originally consisting of three persons, given after the third has died, cannot properly said to be a decision by a majority. That phrase is only appropriate to a decision by two out of three living members, when the third disagrees.*'

Having considered the submissions of both Counsel, Glidewell, J who delivered the judgment of the High Court held as follows:

> "*I thus have to answer three questions:*
>
> *(1)* ***Can it be said that the decision given on July 1, 1980, was a decision of the full Court of three****?*
>
> > *In my judgment the authorities to which I have been referred establish the principle that a decision cannot be said to be effective until it has been communicated to the parties in some way. Until that happens, a decision*

upon which the Court and all its members have reached an interim agreement can nevertheless be altered. After it has been announced, in whatever form it be announced, it cannot be altered.

***I therefore hold that the decision of July 1, 1980, was not a decision of all three members of the Court**. Though I think it unlikely that the Chairman would have changed his mind if he had lived until July 1980, I cannot say that he would not have done so. As I see it, the local valuation Court could have announced its decision in February 1980 while the Chairman was still alive, and said it would give its reasons later. If it had followed this course, in my view there would have been a valid decision of all three members of the Court. But that did not happen.*

(2) ***Was the decision of July 1, 1980, valid as a decision of the majority**?*

***The answer to this question is very much a matter of impression.** Despite Mr. Horton's forceful argument to the contrary, I hold that the decision was valid as the decision of the majority. I have already said that the fact that the Chairman had in February 1980 indicated his agreement to the decision which was eventually given in July did not mean that that decision was a decision to which he was a party. But if he was not a party to it, both the other members of the Court were, and they remained consistent in their views from February until July. Even if the Chairman had changed his mind, the other members would thus presumably have continued of the same mind and the decision given in July if the Chairman had remained alive would have been the decision that was eventually given. Thus, **though it is unusual to describe a decision of a court of which one member has died as a majority of that Court**, it is **a decision of the majority of those who heard the appeal**. Thus in my judgment on this basis the decision of July 1, 1980, of the local valuation Court was a perfectly valid decision*."

Although the reason for the third member not signing – i.e. the death of the Chairman - is similar to the issue before this Court – i.e. the retirement of a member - the factual circumstances are not. It is clear that that Glidewell J was influenced by

the fact that the Chairman had concurred with the views of the two members and to that extent, there was agreement by all three members to the decision that was eventually delivered. No such evidence has been placed by the Respondents in this application with regard to the involvement of Justice Somawansa.

Quite apart from the clear statutory provisions of the AAT Act, this Court is not inclined to follow the above judgment, in any event, for four reasons. The first is that Glidewell, J did not give reasons for his conclusion. The second is that Glidewell, J conceded that the answer to the question was *very much a matter of impression***.** The third is that he did concede that *it is unusual to describe a decision of a court of which one member has died as a majority of that Court*. The fourth reason is the fact that Glidewell, J was influenced by the fact that an appeal was available to the ratepayer against the decision of the Valuation Court, and such right had been exercised.

Taking into consideration all of the above factors and circumstances, this Court is of the view that the AAT was not properly constituted at the time '**P21**' was delivered, and for that reason, '**P21**' is not a decision of the Administrative Appeals Tribunal, and therefore '**P21**' is a nullity.

The necessity for this Court to consider the second ground does not arise in view of the decision on the first ground.

This Court therefore issues a Writ of Certiorari quashing '**P21**'. The appeal of the Petitioner is remitted to the Administrative Appeals Tribunal for a re-adjudication on its merits. This Court directs the Administrative Appeals Tribunal to give priority to the appeal of the Petitioner, and hear and determine the said matter expeditiously. This Court makes no order with regard to costs.

Judge of the Court of Appeal