

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

Hon. T. M. R. Siripala  
Chairman,  
North Central Provincial Council,  
No. 26, Rajanganaya Road, Thambuttegama.

**Petitioner**

**Case No. CA (Writ) 256/2017**

**Vs.**

1. Hon. Peshala Bandara Jayarathne  
Chief Minister,  
Chief Ministry, North Central Province,  
Anuradhapura.
2. Hon. Jayantha Marasinghe  
Deputy Chairman,  
North Central Provincial Council,  
No. 5, Temple Road, Manampitiya.
3. H. L. S. Wijesinghe  
Secretary,  
North Central Provincial Council,  
Provincial Council Secretariat,  
Harischandra Mawatha, Anuradhapura.
4. Hon. Kalyani Karalliyadda  
Chief Government Whip,  
Sirmedura Kiulekada, Kebitigollewa.

5. Hon. Anil Rathnayake  
Leader of Opposition,  
No. 110, Thammannawa, Thalawa.
6. D. M. Amarathunga  
Provincial Council Secretariat,  
Harischandra Mawatha, Anuradhapura.
7. Hon. M. M. Donald  
Member of the North Central Provincial  
Council,  
Kalagedi Palama Asala, Medirigiriya.
8. Hon. H. G. P. K. K. Nelson  
Member of the North Central Provincial  
Council,  
Nelson Niwasa, Somiyal Junction,  
Kaduruwela, Polonnaruwa.
9. Hon. R. M. Prasanna Kumara Mahindaratna  
Member of the North Central Provincial  
Council,  
No. 16, Nawa Gammanaya, Kalundegama,  
Thambuttegama.
10. Hon. W. M. Rohana Bandara Wijesundara  
Member of the North Central Provincial  
Council,  
Royan Enterprise, Jaya Mawatha, Balauwewa,  
Palagala.
11. Hon. H. S. M. Ansar  
Member of the North Central Provincial  
Council,  
No. 12, Muslim Kolaniya, Kaduruwela,  
Polonnaruwa.

12. Hon. S. A. Janaka Priyantha Samarasinghe  
Member of the North Central Provincial  
Council,  
No. 14/191, New Town, Aralaganwila,  
Polonnaruwa.
13. Hon. K. Anuradhanayake  
Member of the North Central Provincial  
Council,  
Pubudupura, Anuradhapura.
14. Hon. Anura Buddhika Gunasekara  
Member of the North Central Provincial  
Council,  
No. 762, Stage 2, Anuradhapura.
15. Hon. P. Saheedu  
Member of the North Central Provincial  
Council,  
Walahanwiddaweva, Horowpathana.
16. Hon. Susil Gunarathne  
Member of the North Central Provincial  
Council,  
Lolugaswewa, Ataeeragollewa,  
Medawachchiya.
17. Hon. M. Herath Banda  
Member of the North Central Provincial  
Council,  
No. 618/B, Stage 2, Anuradhapura.
18. Hon. Sarath Illangasinghe  
Member of the North Central Provincial  
Council,  
Allisthan, Thairappane.

19. Hon. Sampath Sri Nilantha  
Member of the North Central Provincial  
Council,  
No. 19, Dhanyawa, Diulankadawala.
20. Hon. N. V. Samantha  
Member of the North Central Provincial  
Council,  
Suririgama, Sewanapitiya.
21. Hon. S. M. Ranjith Samarakoon  
Member of the North Central Provincial  
Council,  
No. 623/19 A6, House Jayabima, Stage 2,  
Anuradhapura.
22. Hon. R. M. P. B. Rathnayake  
Member of the North Central Provincial  
Council,  
Airport Road, Higurakgoda.
23. Hon. K. H. Nandasena  
Member of the North Central Provincial  
Council,  
No. 192, Tract B, Padavi, Parakramapura.
24. Hon. S. B. Semasinghe  
Member of the North Central Provincial  
Council,  
No. 600/H, Airport Road, Anuradhapura.
25. Hon. G. G. Chandrasena  
Member of the North Central Provincial  
Council,  
No. 233, Track 4, New Town, Medirigiriya.

26. Hon. W. M. Upali Wijekoon  
Member of the North Central Provincial  
Council,  
Sewwandi Thammanapura, Anuradhapura.
27. Hon. K. P. Sarath Kumarasiri  
Member of the North Central Provincial  
Council,  
Pahalahalmillewa, Nochchiyagama.
28. Hon. G. Weerasena  
Member of the North Central Provincial  
Council,  
National Athkam Niwasa Road, Kekirawa.
29. Hon. Amarakeerthi Athukorala  
Member of the North Central Provincial  
Council,  
D. S. Senanayake Mawatha, New Town Road,  
Polonnaruwa.
30. Hon. B. P. Kumara  
Member of the North Central Provincial  
Council,  
Galwaduwahama, Siwalakulama.
31. Hon. Abdul Raheem Abdul Husen  
Member of the North Central Provincial  
Council,  
Mukkarawewa, Horowpathana.
32. Hon. Janaka Mahendra Adhikari  
Member of the North Central Provincial  
Council,  
No. 175, Yakkala Road, Kekirawa.

33. Hon. Wasantha Samarasinghe  
Member of the North Central Provincial  
Council,  
No. 19/623, J. V. P. Office, Preeman  
Mawatha, Anuradhapura.
34. Hon. P. B. Dissanayake  
Governor – North Central Province,  
Maithripala Senanayake Mawatha,  
Anuradhapura.
35. D. M. Badhrani Dissanayake  
Assistant Secretary,  
Office of the Chief Secretary,  
North Central Province, Anuradhapura.

**Respondents**

**Before:** Janak De Silva J.

K. Priyantha Fernando J.

**Counsel:**

M.U.M. Ali Sabry P.C. with S. Alwis for the Petitioner

Asthika Devendra with Kaneel Maddumage for the 1<sup>st</sup> Respondent

Uditha Egalahewa P.C. with Hemantha Gardihewa for the 3<sup>rd</sup> and 35<sup>th</sup> Respondents

Ronald Perera P.C. with A. Kaluarachchi for the 5<sup>th</sup>, 7<sup>th</sup> to 15<sup>th</sup> Respondents

S. Fernando with K. Wickremanyake for the 6<sup>th</sup> Respondent

Chaya Sri Nammuni for the 34<sup>th</sup> Respondent

**Argued On:** 21.03.2019

**Written Submissions Filed On:**

Petitioner on 23.05.2019

1<sup>st</sup> Respondent on 30.05.2019

3<sup>rd</sup> and 35<sup>th</sup> Respondents on 16.05.2019

34<sup>th</sup> Respondent on 24.05.2019

**Decided On:** 26.05.2020

**Janak De Silva J.**

At all times material to this application the Petitioner was a member and the Chairman of the North Central Provincial Council (NCP Council). He assails his removal as the Chairman of the NCP Council on the following grounds:

- (a) The illegal and unlawful conduct of the 3<sup>rd</sup> Respondent in including a 'no confidence motion' in violation of the established procedure of the rules of procedures code of the NCP Council.
- (b) The illegal and unlawful removal of the Petitioner from the post of Chairman of the NCP Council in violation of the procedure established by law in terms of the Provincial Council Act No. 42 of 1987 as amended (Provincial Council Act).
- (c) The illegality and procedural impropriety in appointing the 6<sup>th</sup> Respondent as the Chairman of the NCP Council.
- (d) The illegality and unlawfulness of the 34<sup>th</sup> Respondent in appointing the 6<sup>th</sup> Respondent in violation of legal procedures.
- (e) The acts of one or more of the Respondents, in removing the Petitioner as the Chairman of the NCP Council and the purported appointment of the 6<sup>th</sup> Respondent as the Chairman is:
  - i. Illegal and unlawful,
  - ii. ultra vires the powers vested by the Provincial Council Act,

- iii. violative of the established legal provisions of the Rules of Procedure Code of the NCP Council,
- iv. arbitrary, capricious, exercised in excess of powers vested by the statute and tainted with mala-fides and conducted for collateral purposes.
- v. thus, void having no force or avail in law.

Limited Statement of Objections has been filed by the 3<sup>rd</sup> and 35<sup>th</sup> and the 6<sup>th</sup> Respondents where two preliminary objections have been raised.

According to the Petitioner, section 41 of the Rules of Procedure Code sets out the rules and procedures to be followed in the event of a 'no confidence motion' being brought against the Chairman. In particular attention of Court is drawn to the fact that the Secretary of the NCP Council is required to forward it to the Select Committee of the Council to decide whether it is inconsistent with the Constitution, Provincial Council Act or the Rules of Procedure Code.

The Petitioner contends that on or about 06.06.2017 the members of the NCP Council representing the opposition sought to bring a 'no confidence motion' against the Petitioner but that the Select Committee of the NCP Council decided that it was inconsistent with the Provincial Council Act and the Rules of Procedure Code.

It is further contended that later a second 'no confidence motion' was sought to be brought against him on or about 06.07.2017 in breach of clause 41(1) (a) and (b) of the Rules of Procedure Code and that the Select Committee of the NCP Council again dismissed this motion.

The Petitioner submits that thereafter when the Petitioner was conducting the Council meeting on 18<sup>th</sup> July 2017, to his surprise and apprehension the 'no confidence motion' dismissed by the Select Committee was unlawfully and illegally included in the agenda by the 3<sup>rd</sup> Respondent. Since the 'no confidence motion' could not have been included in the agenda for the reasons elaborated earlier, the Petitioner adjourned the meeting after taking up other matters. According to the Petitioner thereafter the 5<sup>th</sup> to 15<sup>th</sup> Respondents illegally proceeded with the meeting and took steps to remove the Petitioner from the post of Chairman, NCP Council.



The 3<sup>rd</sup> and 35<sup>th</sup> and the 6<sup>th</sup> Respondents have raised two preliminary objections namely failure to comply with Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990 and that the Petitioner has fraudulently suppressed and misrepresented material facts.

I will first consider the preliminary objection that the Petitioner has fraudulently suppressed and misrepresented material facts.

It is established law that discretionary relief will be refused by Court without going into the merits if there has been suppression and/or misrepresentation of material facts. It is necessary in this context to refer to the following passage from the judgment of Pathirana J in *W. S. Alphonso Appuhamy v. Hettiarachchi* [77 N.L.R. 131 at 135,6]:

*"The necessity of a full and fair disclosure of all the material facts to be placed before the Court when, an application for a writ or injunction, is made and the process of the Court is invoked is laid down in the case of the King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmorbd de Poigns. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination".*

This principle has been consistently applied by our courts in writ applications. [*Hulangamuwa v. Siriwardena* [(1986) 1 Sri.L.R. 275], *Collettes Ltd. v. Commissioner of Labour* [(1989) 2 Sri.L.R. 6], *Laub v. Attorney General* [(1995) 2 Sri.L.R. 88], *Blanca Diamonds (Pvt) Ltd. v. Wilfred Van Els* [(1997) 1 Sri.L.R. 360], *Jaysinghe v. The National Institute of Fisheries* [(2002) 1 Sri.L.R. 277] and

*Lt. Commander Ruwan Pathirana v. Commodore Dharmasiriwardene & Others* [(2007) 1 Sri.L.R. 24].

In fact, in *Dahanayake and Others v. Sri Lanka Insurance Corporation Ltd. and Others* [(2005) 1 Sri.L.R. 67] this Court held that if there is no full and truthful disclosure of all material facts, the Court would not go into the merits of the application but will dismiss it without further examination.

According to the Petitioner the first 'no confidence motion' was not approved by the Select Committee of the NCP Council as it was inconsistent with the Provincial Council Act and the Rules of Procedure Code [paragraph 15 of the petition]. In proof of this position two documents X5 and X6 have been pleaded by the Petitioner. It appears that X5 is a copy of the 'no confidence motion' at the bottom of which it is written in Sinhala that the motion should not be included in the agenda. The seal of the Petitioner has been placed below this note and signed presumably by the Petitioner. Next to it the seal of the 3<sup>rd</sup> Respondent appears below an indecipherable statement written in Sinhala.

However, the 6<sup>th</sup> Respondent has with his limited statement of objections produced marked 6R1 the minutes of the Select Committee of the NCP Council held on 12.06.2017 signed by the 3<sup>rd</sup> Respondent. These minutes show that a majority of the Select Committee approved the inclusion of the 'no confidence motion' in the agenda.

This fact has been suppressed and misrepresented to Court by the Petitioner. The Petitioner contends that there is no suppression and misrepresentation of material fact and relies on the decision in *Hotel Galaxy (Pvt) Ltd. and Others v. Mercantile Hotels Management Ltd.* [(1987) 1 Sri.L.R. 5] where it was held:

*"To justify the dissolution of an injunction the suppression or misrepresentation should be of 'such a character as to present to court a case which was likely to procure the injunction but which was in fact different from the case which really existed'"*

*Thus, a misstatement of the true facts by the plaintiff which put an entirely different complexion on the case as presented by him when the injunction was applied for ex parte would amount to a misrepresentation or suppression of material facts warranting its dissolution without going into the merits".*

One of the main grounds on which the Petitioner seeks to assail his removal as Chairman of the NCP Council is that none of the 'no confidence motions' against him was approved to be placed on the agenda by the Select Committee of the NCP Council. It is a material fact on which the Petitioner has sought to mislead Court by suppressing and /or misrepresenting the true facts. Hence this application is liable to be dismissed on that ground alone without going into the merits.

There is further suppression and/or misrepresentation of material facts by the Petitioner. The Petitioner claims that he was taken by surprise when the second 'no confidence motion' which had been dismissed by the Select Committee of the NCP Council was included in the agenda by the 3<sup>rd</sup> Respondent for the meeting on 18<sup>th</sup> July 2017 [paragraph 26 of the petition].

It is inconceivable how the Petitioner could have been surprised when he had previously invoked the jurisdiction of the Provincial High Court of the North Central Province holden in Anuradhapura in case no. 15/2017 (3R3) on 13.07.2017 seeking to prevent the said 'no confidence motion' being taken up on 18.07.2017. According to paragraph 28 of the petition filed in that case the Petitioner was clearly aware of the inclusion of the said motion in the agenda for the meeting on 18.07.2017. This application was withdrawn on 17.07.2017 by the Petitioner on what is stated to be technical grounds. The Petitioner has suppressed to this Court the filing and withdrawal of that application.

It also appears to me that the Petitioner is guilty of suppression and/or misrepresenting material facts by stating that even the second 'no confidence motion' was rejected by the Select Committee. However, according to the minutes of the Select Committee meeting held on 10.07.2017 (6R5) a majority of the members had indicated that the 'no confidence motion' should be included in the agenda for the next meeting.

In this respect, I wish to advert to the decision in *Moosajeys Limited v. Eksath Engineru Saha Samanya Kamkaru Samithiya* [79(I) N.L.R. 285 at 288] where the Court held:

*"The pleadings in their petition and affidavit do not contain a full disclosure of the real facts of the case and to say the least the Petitioner has not observed the utmost good faith and has been guilty of a lack of uberrima fides by a suppression of material facts in the pleadings. It was neither fair by this court nor by his counsel that there was no full disclosure of material facts."*

The learned President's Counsel for the Petitioner adverted to the recent pronouncement of the Supreme Court in *Nobel Resources International Pvt. Limited v. Hon. Ranjith Siyambalapitiya and Others* [SC (F/R) 394/2015] where it was held:

*"As it is essential to the maintenance of the rule of law that every organ of the State must act within the limits of its power and carry out the duty imposed upon it in accordance with the provisions of the Constitution and the law, the Court cannot close its eyes and allow the actions of the State or public authority go unchecked in its operations, in the public interest. If the Petitioner with a good case is turned away, merely because he is not sufficiently affected or the Petitioner has no 'locus standi' to maintain this application, that means that some Government Agency is left free to violate the law and this is not only contrary to the public interest but also violates the Rule of Law, the object of which is to protect the citizens from unlawful governmental actions. It will be a travesty of justice if, having found as a fact that a fundamental right has been infringed or is threatened to be infringed, the Court yet dismissed the application on a preliminary objections raised by the Respondents."* (Emphasis is of the Petitioner)

I am in full agreement with this pronouncement. At the same time it is also a travesty of justice to allow a litigant to plead his case on the merits before this Court in an application by judicial review even where it is found that he has suppressed and/or misrepresented material facts to Court.

In *Fonseka v. Lt. General Jagath Jayasuriya and Five Others* [(2011) 2 Sri.L.R. 372] a divisional bench of this Court held:

*“(1) A petitioner who seeks relief by writ which is an extra-ordinary remedy must in fairness to Court, bare every material fact so that the discretion of Court is not wrongly invoked or exercised.*

*(2) It is perfectly settled that a person who makes an ex parte application to Court is under an obligation to make that fullest possible disclosure of all material facts within his knowledge.*

*(3) If there is anything like deception the Court ought not to go in to the merits, but simply say "we will not listen to your application because of what you have done."*

The Rule of Law in its primary sense means that everything must be done according to law. Permitting litigants to suppress and/or misrepresent material facts to Court, in order to obtain relief runs contrary to this ideal. Justice according to Rule of Law must mean applying the law to the true state of the facts.

In conclusion, I wish to advert to another matter. In terms of Article 140 of the Constitution this Court must act “according to law” in deciding whether to issue writs of Certiorari and Mandamus. This means English common law principles [*Sirisena Cooray v. Tissa Dias Bandaranayake* (1999) 1 Sri. L. R. 1 at 14-15]].

English Courts have considered the conduct of the Petitioner in deciding whether to grant discretionary relief by way of judicial review. A ratepayer was denied a remedy to quash a refusal to make a refund of rates because of his previous deliberate and unjustifiable withholding of rates owed [*Dorot Properties Ltd. v. London Borough of Brent* (1990) C.O.D. 378]. A local authority which pursued pointless litigation was denied any remedy [*Windsor and Maidenhead Royal BC v. Brandrose Investments Ltd.* (1983) 1 W.L.R. 509]. A local council which sought to challenge ministerial confirmation of its own proposals for re-organising schools, relying on their own procedural error was denied relief [*R. v. Secretary of State for Education and Science ex. P. Birmingham City Council* (1985) 83 L.G.R. 79].

Our Courts have adopted this approach and withheld relief due to the unmeritorious conduct of the Petitioner even where there has been a clear violation of natural justice [*Wickremasinghe v. Ceylon Electricity Board and Another* (1982) 2 Sri.L.R. 607].

In terms of section 8(1) of the Provincial Councils Act, the Chairman shall not preside, although it appears that he can be present, at any sitting of the Provincial Council while any resolution for his removal is under consideration. This is exactly what the Petitioner did though he was clearly aware that the 'no confidence motion' against him was in the agenda. The prohibition appears to be an application of the rules of natural justice, in particularly *nemo judex in causa sua* which has been breached by the Petitioner.

For all the foregoing reasons, I uphold the preliminary objection on suppression and/or misrepresentation of material facts and refuse notice. The application is dismissed in limine. I make no order as to costs.

Judge of the Court of Appeal

**K. Priyantha Fernando J.**

I agree.

Judge of the Court of Appeal