

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

In the matter of an application for the issue of a Writ
in the nature of a Writ of Certiorari.

Sinhalage Jagath Samarawickrama
The Chairman,
Pradeshiya Sabha of Dimbulagala, Dimbulagala.

Petitioner

Case No. CA (Writ) 168/2015

Vs.

1. Hon. Peshala Jayarathne
Chief Minister and Minister-in-Charge of the
subject of Local Government,
Office of the Chief Minister,
Provincial Council of the North Central Province,
Anuradhapura.
2. Mr. K. K. Sunil Gamini Perera
Retire High Court Judge,
No. 74/11, Jaya Road, Udahamulla, Nugegoda.
3. Commissioner of Local Government of the North
Central Province
Office of the Commissioner of Local
Government, Anuradhapura.
4. Dimbulagala Pradeshiya Sabha, Dimbulagala.
5. The Secretary
Dimbulagala Pradeshiya Sabha, Dimbulagala.
6. The Governor
North Central Province Governor's Secreatariat,
NCP Provincial Council, Harischandra Mawatha,
Anuradhapura.

Respondents

Before: Janak De Silva J.

N. Bandula Karunarathna J.

Counsel:

Mahanama De Silva with Upali Jayamanne for the Petitioner

Harindra Rajapakse for the 1st and 3rd Respondents

Ranjan Mendis with B.S. Peterson and Ashoka Kandambi for the 4th and 5th Respondents

Argued On: 09.05.2019

Written Submissions Filed On:

Petitioner on 17.07.2019

1st and 3rd Respondents on 19.07.2019

4th and 5th Respondents on 28.06.2019

Decided On: 22.06.2020

Janak De Silva J.

The Petitioner was at all times material to this application the Chairman of the Dimbulagala Pradeshiya Sabha. By letter dated 21.02.2014 (P10) the Chief Minister of the North Central Province called for explanations from the Petitioner on two specific charges. Thereafter by letter dated 26.05.2014 (P12) the Chief Minister appointed the 2nd Respondent as the inquiring officer in terms of section 185(2) of the Pradeshiya Sabha Act No. 15 of 1987 (Pradeshiya Sabha Act) to inquire and report on the said charges.

It appears that after inquiry the 2nd Respondent submitted his report P17 to the 1st Respondent who was by then the Chief Minister. The 1st Respondent thereafter issued a notification in terms of section 185 of the Pradeshiya Sabha Act removing the Petitioner from the post of Chairman of the Dimbulagala Pradeshiya Sabha (P16).

The Petitioner is seeking a writ of certiorari quashing the said order dated 18.02.2015 (P16) made by the 1st Respondent.

A preliminary objection was raised by the 1st, 3rd and the 5th to 6th Respondents that necessary parties have not been made Respondents. It is claimed that the members of the Dimbulagala Pradeshiya Sabha should have been made Respondents as the charges against the Petitioner stems from the failure on the part of the Petitioner to tender an amended budget to the Pradeshiya Sabha.

However, as pointed out by the Petitioner this objection was raised before a different bench on 12.02.2019 and was overruled.

The main contention of the Petitioner is that the 2nd Respondent conducted the inquiry in breach of the rules of natural justice and considered irrelevant matters and not the two charges set out in the show cause letter (P10).

The rules of natural justice are not engraved in stone. The exact scope of the requirements of fairness depends on the circumstances of each case such as the character of the decision-making body, the types of decisions to be made and the statutory framework which guides the decision-making body.

As Tucker LJ expounded in *Russell v. Duke of Norfolk* [(1949) 1 All E.R. 109 at 117]:

"There are, in my view, no words which are of universal application to every kind of inquiry and kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity to present his case."

The 2nd Respondent was appointed in terms of section 185 (2) of the Pradeshiya Sabha Act which requires the Minister to appoint a retired judicial officer to *inquire into and report* to him on whether any of the matters referred to in section 185(1) of the Pradeshiya Sabha Act has been committed by any member of a Pradeshiya Sabha.

Such an inquiry has the potential to affect the membership of a person in a Pradeshiya Sabha and as such must provide him with a fair hearing. A fair hearing in this instance necessarily requires *inter alia* the person being given an opportunity to know the charges against him, an opportunity of summoning any witnesses to meet the case against him as well the opportunity to cross-examine the witnesses testifying against him. It must be borne in mind that such a person is elected by the people and his removal must be according to the rule of law.

The Petitioner was not given an opportunity of cross-examining the persons who testified against him nor was he given an opportunity of being present during their testimony.

There is a more fundamental error of law in the conduct of the inquiry by the 2nd Respondent. He was appointed to inquire into and report on the charges made against the Petitioner by the Chief Minister as set out in letter dated 21.02.2014 (P10). However, he has gone on a voyage of discovery and allowed fresh complaints and not considered the two charges and has thereby acted *ultra vires*. It has also resulted in the Petitioner being deprived of knowing the charges against him.

In the order dated 18.02.2015 (P16), the 1st Respondent states that he has considered the report of the 2nd Respondent P17 in making the said order. Thereby he has fallen into error by breaching the rules of natural justice and acting illegally.

The 1st, 3rd and the 5th to 6th Respondents have raised an objection that the application is futile since the Petitioner has not sought a quashing of the report of the 2nd Respondent P17. The decision affecting the rights of the Petitioner were made by order dated 18.02.2015 (P16). It is sufficient for the Petitioner to have sought only a quashing of order dated 18.02.2015 (P16).

For all the foregoing reasons, I issue a writ of certiorari quashing the order dated 18.02.2015 (P16) made by the 1st Respondent.

The Petitioner is entitled to the costs of this application from the 1st Respondent.

Judge of the Court of Appeal

N. Bandula Karunarathna J.

I agree.

Judge of the Court of Appeal