

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 Writ of Certiorari under and in terms of the provisions of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. V. Kalyanasundaram
The President,
Ampara District Tamil Maha Sangam,
No. 441, Pansala Lane, Akkaraipattu.
2. Nadaraja Haran
The Secretary,
Ampara District Tamil Maha Sangam,
No. 441, Pansala Lane, Akkaraipattu.

Petitioners

Case No. C. A. (Writ) Application 611/2011 Vs.

1. A. L. M. Athavullah
Minister of Local Government and Provincial
Councils,
Ministry of Local Government and Provincial
Councils, Battaramulla.
- 1B. Faizer Musthapa,
Minister of Local Government and Provincial
Councils, Ministry of Local Government and
Provincial Councils, Union Place, Colombo 2.
2. The Akkaraipattu Pradeshiya Sabha,
Akkaraipattu.
3. The Aliyaaddivembu Pradeshiya Sabha,
Aliyaaddivembu.
4. The Akkaraipattu Municipal Council,
Akkaraipattu.

5. Zaki Athaulla
The Mayor,
The Akkaraipattu Municipal Council,
Akkaraipattu.
- 5B. Athaulla Sakeel,
The Mayor,
The Akkaraipattu Municipal Council,
Akkaraipattu.
6. The District Secretary
District Secretariat, Ampara.
7. The Surveyor General
Surveyor General's Department, Colombo 05.

Respondents

Before: Janak De Silva J.

Counsel:

J.C. Weliamuna P.C. with Kaushali Samarathunga for the Petitioners

Maithree Amerasinghe SC for 1B, 6th and 7th Respondents

Written Submissions tendered on:

Petitioner on 26.10.2018

1B, 6th and 7th Respondents on 19.09.2018

Decided on: 02.03.2020

Janak De Silva J.

This application relates to the Gazette Notification marked 'P5(a)' in respect of the Administrative boundaries of Akkaraipattu Pradeshiya Sabha, which has been amended by the Gazette Notification marked 'P2(a)'. Accordingly, Aliyaadivembu Pradeshiya Sabha [Vide page 5A of P2(a)] and Karunkoditivu Pradeshiya Sabha [Vide page 6A of P2] were established.

Aliyaadivembu Pradeshiya Sabha consisted of the following Grama Niladhari Divisions;

“13-Pannakaadu; 21-Karunkoditivu No. 7 (Part); 22-Karunkoditivu No. 8/9; 23-Kolavil”

Karunkoditivu Pradeshiya Sabha consisted of the following Divisions;

“15-Karunkoditivu No. 1; 16-17-Karunkoditivu No. 2/3; 18-19-Karunkoditivu No. 4/5; 20-Karunkoditivu No. 6; 21-Karunkoditivu No. 7 (Part); 22-Karunkoditivu No. 8 (Part)”

By way of the Gazette Notification marked ‘P4’ dated 17-03-1999, the name of the Karunkoditivu Pradeshiya Sabha was changed to Akkaraipattu Pradeshiya Sabha.

Thereafter by way of Gazette Notification marked ‘P5(a)’ dated 06-01-2011, the Minister of Local Authorities amended the land area of the Akkaraipattu Pradeshiya Sabha by replacing the previous schedule, whereby, following Grama Niladhari Divisions were brought under Akkaraipattu Pradeshiya Sabha –

“Paddiyadippitty – (AP/20/A); Pallik Kudiyiruppu – 01 – (AP/20/A/1); Pallik Kudiyirupu – 02 – (AP/20/A/2); Isanganicheemai – (AP/20/A/3); Alim Nagar – (AP/20/A/4)”

The Minister (1st Respondent) further re-divided aforesaid 4 Grama Niladhari Divisions of the Aliyaadivembu Pradeshiya Sabha into 22 Grama Niladhari Divisions. The Minister in his Statement of Objections admitted that 4 Grama Niladhari Divisions were re-divided into 22 Divisions and that it too was done under the patronage of Minister of Home Affairs and not by the 1st Respondent [Vide paragraph 10 of the Statement of Objections of the 1st Respondent].

The Petitioners’ assertion is that population, as transpires from the document marked P4(a) to P4(b) could be seen on religious basis and in observing many of those Grama Niladhari Divisions, they are primarily Hindu/Tamil Grama Niladhari Divisions.

By the Gazette Notification marked ‘P5B’, the Minister re-demarcated Akkaraipattu Pradeshiya Sabha and by the same Gazette acting under sections 2, 3, 5 and 9 of the Municipal Councils Ordinance, a new Municipal Council called ‘Akkaraipattu Municipal Council’ was formed [Vide P5b].

The Petitioners’ position is that this demarcation of boundaries has now made Tamils, who were a majority, a minority in the previous known ‘Aliyaadivembu Pradeshiya Sabha’ (now Akkaraipattu Pradeshiya Sabha) and this changed the ethnic composition of the Pradeshiya Sabha.

The Respondents do not dispute the fact that the Petitioners or the people of the area were not consulted prior to the purported re-demarcation.

The issue that arises for determination in this application is whether the relevant Minister can demarcate or re-demarcate boundaries of a Pradeshiya Sabha without consulting the people in that area.

Section 9A (a) of the Pradeshiya Sabha Act No. 15 of 1987 as amended (Act) states that the Minister may at any time by Order published in the Gazette vary the limits of any Pradeshiya Sabha area, in a manner consistent with the provisions of section 2 of the Act.

Section 2(1) of the Act reads:

"The Minister may, with a view to facilitating the effective participation of the people in local government and development functions, by Order published in the Gazette declare any area to be a Pradeshiya Sabha area for the purposes of this Act and shall define the administrative limits of the area so declared. The administrative limits of every Pradeshiya Sabha area so declared shall, as far as possible, correspond to limits of an Assistant Government Agent's division excluding any areas comprised in a Municipality or a town (within the meaning of the Urban Councils Ordinance) which falls within the limits of such Assistant Government Agent's division. The Minister may by the same Order or by a subsequent Order, constitute a Pradeshiya Sabha for such Pradeshiya Sabha area and assign a name to such Sabha." (Emphasis added)

The learned President's Counsel for the Petitioners relying on the italicized portion submitted that there cannot be any facilitation of the effective participation of the people in local government and development functions unless they are consulted before the demarcation or re-demarcation of boundaries of a Pradeshiya Sabha. He relied on the decision of this Court in *Wickremasinghe and Another v. The Urban Development Authority* [(2002) 3 Sri.L.R. 243] where it was held that rules of natural justice demand that there has to be a fair hearing before an administrative authority acts or makes decisions affecting the rights of subjects.

However, in *Bates v. Lord Hailsham* [(1972) 3 All E.R. 1019] Megarry J. held as follows (at pages 1024-4):

"Let me accept that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness. Nevertheless, these considerations do not seem to me to affect the process of legislation, whether primary or delegated. Many of those affected by delegated legislation, and affected very substantially, are never consulted in the process of enacting that legislation; and yet they have no remedy." (Emphasis added)

We have some Acts which specifically require consultations before the Minister makes regulations. Examples are Section 19(1) of the Atomic Energy Authority Act No. 19 of 1969, Section 24(1) of the Electronics Transactions Act No. 19 of 2006, Section 40(1) of the National Aquatic Resources Research and Development Agency Act No. 54 of 1981 and Section 30(1) of the National Enterprise Development Authority Act No. 17 of 2006. All these provisions require prior consultations with other bodies before the Minister makes any regulations.

In this regard I wish to advert to the English case of *R (on the application of BAPCO Action Ltd) v. Secretary of State for the Home Department* [2007] EWCA Civ 1139, paras 45-46] where Lord Justice Hedley states as follows:

“45. The proposed duty is, as I have said, not unthinkable – indeed many people might consider it very desirable - but thinking about it makes it rapidly plain that *if it is to be introduced it should be by Parliament and not by the courts. Parliament has the option, which the courts do not have, of extending and configuring an obligation to consult function by function. It can also abandon or modify obligations to consult which experience shows to be unnecessary or unworkable and extend those which seem to work well. The courts, which act on larger principles, can do none of these things.*

46. It is here, I think, that the respondents' conspectus of statutory provisions for consultation is relevant and revealing. While it is not, for reasons I have given, an aid to the construction of the Immigration Act 1971, it illustrates very clearly the need for specificity in a requirement of consultation. *The variety of statutory provisions, a list of which is appended to this judgment, shows how the legislature will sometimes specify whom it requires to be consulted; will sometimes prescribe consultation with those members or representatives of a named class, or with those representative organisations, who appear to the minister or body to be appropriate or (what is not the same thing) to be representative; will sometimes dispense with the requirement in cases of urgency or where the consultee agrees not to be consulted; will sometimes make consultation discretionary; will sometimes make consultation obligatory but leave the choice of consultees to the discretion of the minister or body concerned; will sometimes require consultation with those appearing to the minister to represent interests substantially affected or otherwise defined; and may combine consultation with specified bodies with publication of a general invitation to make submissions. Two or more of these models may be combined. In one remarkable instance (the Recorded Delivery Service Act 1962, s. 1(3)(4)), the Secretary of State is required, before exercising the power to amend a local*

or private Act, to consult with the promoter of the Bill which became the Act, or with anyone considered by him to be a successor to the promoter's interest." (Emphasis added)

The proposition that rules of natural justice must be followed when exercising legislative power is completely misconceived in law. There is no requirement for a hearing to be given to affected parties prior to the exercise of legislative power, whether it is primary or delegated in nature unless it is specifically required by law. However, neither Section 2 or 9A (a) of the Act requires the relevant Minister to consult the people in the area before demarcating or re-demarcating boundaries of a Pradeshiya Sabha.

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

Judge of the Court of Appeal