

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

CA (Writ) Application No: 308/2013

M.T.Thilakaratne,
98, Medagampitiya Road,
Kukulnape, Pallewela.

PETITIONER

Vs.

- 1) D.D. Upul Shantha De Alwis.
- 1A) B.N. Damminda Kumara,
Commissioner of Co-operative Development,
Registrar of Co-operative Societies.
- 2) P.A.A.S. Weerasekara,
Assistant Commissioner of Co-operative
Development (Gampaha),
Kidagammulla, Walauwatte, Gampaha.
- 3) J.S. Fernando,
Secretary, Seemasahitha Meerigama
Visraama Vetup Labannange Naya Sahana
Samupakara Samithiya, Mirigama.
- 4) E.P.Amarawansa,
Regional Officer,
Department of Co-operative Development,
Kidagammulla, Walauwatte, Gampaha.
- 5) S.A. Chandrasena,
Investigation Unit.
- 6) M.B. Nihal,
Mottewawatte,

Keenadeniya, Ambepussa.

- 7) H.P.C. Muthugala,
182, Dheerananda Mawatha,
Mirigama.
- 8) N.P.R. Jayawardena,
Katukurundugayayawatte,
Kotadeniyawa Road, Mirigama.
- 9) N. R. Nandasena,
61, Weweldeniya Road, Neligama, Mirigama.
- 10) K.A. Jayawardena,
Seemasahitha Meerigama Visraama Vetup
Labannange Naya Sahana Samupakara
Samithiya, Mirigama.
- 11) Wijeratne Walisinghe,
Co-operative Societies Inspector.

1st, 1A, 5th and 11th Respondents at
Department of Co-operative Development,
Western Province, Duke Street, Colombo 1.

RESPONDENTS

Before: Arjuna Obeyesekere, J / President of the Court of Appeal

Counsel: Dr Sunil Coorey with T.M.A. Muthaliph for the Petitioner

Manohara Jayasinghe, Senior State Counsel for the 1st, 1A, 2nd and 4th
Respondents

Argued on: 5th October 2020

Written Submissions: Tendered on behalf of the Petitioner on 12th February 2021

Tendered on behalf of the 1st, 1A, 2nd and 4th Respondents on 11th
January 2021

Decided on: 21st May 2021

Arjuna Obeyesekere, J., P/CA

The Petitioner states that he obtained membership in the “සීමාසහිත මරිගම විශ්‍රාම වැටුප් ලබන්නන්ගේ නය සහන සමුදාය සමිතිය” in 2004. He states that since obtaining membership, he served as a member of the Working Committee of the said Society until 2008. The Petitioner had also held the office of Assistant Secretary and Vice Chairman of the said Society at different times. Due to ill health, the Petitioner had stepped down in 2008 from all posts that he held at that time. The Petitioner had been re-appointed to the Working Committee of the said Society in July 2011 and had been appointed as its Secretary soon thereafter.

The Petitioner admits that the 1st Respondent, the Commissioner of Co-operative Development and Registrar of Co-operative Development, acting in terms of the Co-operative Societies Statute of the Western Province (the Statute) appointed the 5th Respondent to conduct an investigation into the activities of the said Society. Pursuant to the said investigations, the Petitioner had been issued with a charge sheet marked ‘**P2**’ by which it was alleged that the Petitioner had obtained a sum of Rs. 21,050 as an allowance for acting in the office of Secretary during the period January 2007 – December 2007, without having obtained the necessary approvals. The response of the Petitioner to the charge sheet is marked ‘**P3**’.

The Petitioner states that by letter dated 9th September 2013 marked ‘**P5**’, the 1st Respondent had informed him that having considered the aforementioned response of the Petitioner, a decision has been taken by the 1st Respondent to remove the Petitioner from his membership in the Working Committee of the said Society. The 1st Respondent had further informed the Petitioner that he would not be eligible to hold office in a Co-operative Society for a period of seven years from 9th September 2013.

Aggrieved by the said decision in ‘**P5**’, the Petitioner filed this application seeking *inter alia* a Writ of Certiorari to quash the said decision of the 1st Respondent.

The Petitioner does not deny the fact that he in fact received the said payment but states that what was paid to him was not a salary but an allowance. The learned

Counsel for the Petitioner submitted further that the Petitioner has not acted fraudulently when he accepted the said payment. In this regard, I must note that the Respondents are not alleging any fraud on the part of the Petitioner but only that the necessary approvals were not obtained.

The learned Senior State Counsel for the Respondents submitted that in terms of By-law 4.7.2, a person holding the office of Secretary could not accept any payment if he is a member of the Working Committee and that as the Petitioner, admittedly, was a member of the Working Committee during the period that the allowance was paid, the Petitioner was not entitled to the said allowance.

The learned Senior State Counsel for the Respondents also drew the attention of this Court to Rule 22(i) of the Rules marked '**R10**' made in terms of Section 61 of the Co-operative Societies Act, which reads as follows:

“ලියාපදිංචි කළ සමුපකාර සමිතියක කාරක සභාවේ සාමාජිකයෙකුට වැටුප් මුදල්, පාරිතෝගික මුදල් හෝ වෙනත් පාරිශ්‍රමකයක් ලබාගැනීමට පුලුවන් වන්නේ මහා සභාවේ පූර්ව අනුමැතිය ඇතිවත් රෙජිස්ට්‍රාර්තුමා විසින් නියම කරන ප්‍රමාණ අනුවත් පමණක්ය”

It is clear that the nature of the payment is not limited to a salary and that the payment of even an allowance must be in terms of the above Rule. The issue that needs to be considered therefore is whether the necessary approvals have been obtained prior to making the said payment. The Petitioner states that on 12th December 2005, the Working Committee of the Society approved a payment of Rs. 5000, 3500 and 3000 for the Chairman, Secretary and Treasurer, respectively. The Petitioner states further that at the Annual General Meeting of the Society held on 24th January 2006, a payment of Rs. 5000, 1000 and 5000 were approved for the Chairman, Secretary and Treasurer, respectively. The Petitioner states that even though covering approval of the Assistant Commissioner of Co-operative Development was sought by letter dated 27th July 2006, approval was not received. It is therefore clear that the payment of the allowance was not in conformity with the above Rule. Therefore, the issuance of the charge sheet and the subsequent findings against the Petitioner is not illegal.

The learned Counsel for the Petitioner also submitted that even though in terms of Section 48 of the Co-operative Societies Statute of the Western Provincial Council No. 3 of 1998, as amended by Statute No. 4/2011, the reply of the Petitioner to the charge sheet must be submitted by the 1st Respondent to the Board of Review appointed under the Co-operative Societies Law, the Respondents have failed to do so. The learned Senior State Counsel drew my attention to the Report of the Board of Review marked '**R10**' which has specifically considered the response of the Petitioner and recommended that the punishment conveyed to the Petitioner by '**P5**' be imposed.

In the above circumstances, I am of the view that the Petitioner is not entitled to the relief prayed for. This application is accordingly dismissed, without costs.

President of the Court of Appeal