

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

Handunkutti Pedige Chandana Kumara  
Jayawandala

Chairman

Mawanella Pradeshiya Sabha,

Mawanella.

PETITIONER

C.A. WRIT/ 383/2020

-Vs-

1. Tikiri Kobbekaduwa

The Governor

Sabaragamuwa Province,

Block C- Ground Floor,

Sabaragamuwa Provincial Council Complex,

New Town,

Ratnapura.

2. Herath Mudiyanseelage Rohana Anura  
Kumara

Retired Judicial Officer,

Governor's Secretariat of Sabaragamuwa  
Province,

New Town,

Ratnapura.

RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J. (P/CA) &  
Sobhitha Rajakaruna, J.

COUNSEL : Nigel Hatch, PC with Shantha Jayawardena,  
Niranjan Aruleragasam and Chamara  
Nanayakkarawasam for the Petitioner.

Sanjeeva Jayawardena, PC with Rukshan  
Senadheera for the 1<sup>st</sup> Respondent.

Harsha Amarasekara, PC with Shalika  
Wijewardena instructed by Athula de Silva  
for the 2<sup>nd</sup> Respondent.

Argued on : 22.10.2020

Decided on : 23.10.2020

A.H.M.D. Nawaz, J. (P/CA)

On the 17<sup>th</sup> of September 2020 this court had issued notice in writ application bearing No. 170/2020 and the matter had been fixed for argument on the 22<sup>nd</sup> of October 2020. This court issued notice in that matter as the court was of the view that it was necessary to look into the issue as to whether the 1<sup>st</sup> Respondent in this matter enjoys legal powers to take a disciplinary action against the Petitioner during a period where the respective Provincial Council remains dissolved.

The main relief sought in case No. 170/2020 is for a writ of *certiorari* to quash the charge sheet marked P14 and the main interim relief prayed for, *inter alia*, in that case is to suspend the operation of the said charge sheet. However the petition filed in this case brings to the notice of this court that subsequent to the issuance of notice in the above matter, a retired judicial officer has now been appointed to hold an inquiry against the Petitioner. The main interim relief prayed for in the instant case is to restrain the 2<sup>nd</sup> Respondent conducting any disciplinary inquiry.

When the aforementioned main question namely, the *vires* of legal authority is under review before this court, any action in furtherance of a disciplinary action would be in contravention of the notice that this court has already issued in the said case bearing No. 170/2020. Therefore the court is of the view that any commencement of a disciplinary inquiry at this stage will render nugatory the final issue that this court is called upon to decide.

In the circumstances, we direct the issuance of notice. We also issue interim relief as prayed for in paragraphs (i) and (j) of the prayer of the petition.

PRESIDENT OF THE COURT OF APPEAL

Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE COURT OF APPEAL