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

In the matter of an appeal under and in terms of Article 154(P)6 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 11 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990.

Court of Appeal Case No:
CA(PHC)0044/2019

High Court Case No:
අ **5027**

Weerakkody Appuhamillage Sarath Hemachandra Weerakkody,
Kelagama - Napawala,
Avissawella.

Plaintiff

Vs.

1. **Registrar of the Co-operative Societies of theSabaragamuwa Province**,
   Department of Co-operative Development,
   New Town - Ratnapura.

2. **Kapila Perera**,
   Cooperative Development Commissioner and Registrar (Acting),
   Department of Co-operative Development,
   Sabaragamuwa Provincial Council,
   New town - Ratnapura.

3. **P. A. Podinilame**,
   Cooperative Development Commissioner and Registrar (Acting),
   Department of Co-operative Development,
   New town - Ratnapura.

4. **Yatiyanthota Multipurpose Co-operative Society Ltd**,
   Yatiyanthota.

5. **W. G. Kamalawathie**,
   Chairman of the Arbitration Panel,
   No. 9/4 Athiyagala Road - Athurapana,
   Pitihuma - Kegalle.

6. **W. Karunathilaka**,
   Member of the Arbitration Panel,
   Doranuwa-Ruwanwella.

7. **S. A. G. Samaraweera**,
   Member of the Arbitration Panel,
   Morawaka-Nelundeniya.

Respondents

AND BETWEEN

Weerakkody Appuhamillage Sarath Hemachandra Weerakkody,
Kelagama - Napawala,
Avissawella.

Petitioner-Appellant

Vs.

1. **Registrar of the Co-operative Societies of the Sabaragamuwa Province**,
   Department of Co-operative Development,
   New Town - Ratnapura.

2. **Kapila Perera**,
   Cooperative Development Commissioner
   and Registrar (Acting),
   Department of Co-operative Development,
   Sabaragamuwa Provincial Council,
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   Member of the Arbitration Panel,
   Morawaka-Nelundeniya.

Respondent-Respondents

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel : Pubudu de Silva instructed by Manju S. Chandrasena for the Appellant.

		Abigail Jayakody, S.C. for the 1st to 3rd Respondents Darshana Kuruppu with Tharushi Gamage for the 4th Respondent. 5th to 7th Respondents are absent and are unrepresented.
Argued on	:	28.08.2025
Written Submissions of the Petitioner -Appellant tendered on	:	11.01.2024 and 07.10.2025
Written Submissions of the 1st to 3rd Respondent -Respondents tendered on	:	18.07.2024
Written Submissions of the 4th Respondent -Respondent tendered on	:	18.10.2024
Decided on	:	19.12.2025

K. M. S. DISSANAYAKE, J.

Instant appeal arises from a judgement dated 28.02.2019 made by the learned High Court Judge of the Sabaragamuwa Province holden at Kegalle in the case bearing No. ඊඅ 5027 (hereinafter called and referred to as 'the Judgement') dismissing an application made thereto by the Petitioner-Appellant (hereinafter called and referred to as 'the Appellant') against the 1st to 4th Respondent-Respondents (hereinafter called and referred to as 'the 1st, 2nd, 3rd and 4th Respondent') praying for a mandate in the nature of a writ of *certiorari* against

the 2nd Respondent to quash the decision dated 30.12.2015, made by him in appeal preferred to him by the Appellant from an arbitral award under and in terms of the provisions of section 58 of the Co-operative Societies Statute of the Provincial Council of Sabaragamuwa Province No. 03 of 2007 (hereinafter called and referred to as 'the Statute') and contained in 'ඉඵ12'.

The facts and circumstances relevant and material to the instant appeal as can be gathered from the record, may be briefly, set out as follows;

The Appellant had at all times material to the instant application, been employed as a manager of a Co-op City Supermarket of the 4th Respondent; and that, the 4th Respondent had by the letter of demand dated 25.11.2010 (ඉඵ4), demanded a sum of Rs. 1185275.31/- from the Appellant for shortage of goods entrusted to him in the said capacity during his period of service as a manager of a Co-op City Supermarket of the 4th Respondent, for shortage of cash and festival advance which demand had been rejected by the Appellant; and that the 4th Respondent had then, referred the dispute to the 1st Respondent for arbitration who had in turn, appointed the 5th, 6th and 7th Respondents as an arbitral panel to arbitrate the dispute so arisen between the 4th Respondent and the Appellant; and that consequent to an inquiry held by the arbitral panel consisting of the 5th, 6th and 7th Respondents, they had made their arbitral award (ඉඵ5) by which the Appellant was held liable to pay the 4th Respondent a sum of Rs. 1027838.52/-; and that being aggrieved by the said arbitral award, the Appellant had then, preferred an appeal to the 1st Respondent against the arbitral award and deposited Rs.10,000.00/- as security deposit together therewith under and in terms of section 58(3) of the Statute; and that the 3rd Respondent had by his letter dated 14.04.2012 (ඉඵ10) asked the Appellant to furnish further details in relation to his appeal and in response, the Appellant had sent a letter through registered post to the 3rd Respondent on 2012.05.12 (ඉඵ11), challenging the notification so sent to him by the 3rd Respondent (ඉඵ10) on the premise that it was null and illegal for; the

appellate power vested in the 1st Respondent under section 58(5) of the Statute could not be delegated to the 3rd Respondent; and that notwithstanding the challenge so raised by the Appellant to the *vires* of the notice (පෙ10), the 2nd Respondent had without summoning the parties and not giving them a hearing, informed the Appellant of his decision taken in appeal, by the letter dated 30.12.2015 (පෙ12) that he had acting in appeal, decided to amend the arbitral award (පෙ5) and accordingly, asked him to pay the 4th Respondent in a sum of Rs. 1077832.23/- on or before 27.02.2016; and that being aggrieved by the decision of the 2nd Respondent (පෙ12), the Appellant had made an application to the High Court of the Sabaragamuwa Province holden at Kegalle (hereinafter called and referred to as the High Court of the Province) on the grounds urged in paragraph 17 (අ), (ආ) and (ඇ) of his application praying for a mandate in the nature of writ of *certiorari* against the 2nd Respondent to quash the decision dated 30.12.2015, made by him in appeal preferred to him by the Appellant from an arbitral award under and in terms of the provisions of section 58 of the Statute (පෙ12); and that the learned High Court Judge of Kegalle had by his order dated 28.02.2019, dismissed the application by holding that the Appellant had not established his position adverted to therein before Court; and that being aggrieved by the aforesaid decision of the High Court of the Province, the instant appeal had been preferred therefrom to this Court by the Appellant on the grounds of appeal morefully, set out in paragraph 18 (අ) to (ඇ) of the petition of appeal among any other grounds of appeal that may be urged by counsel at the hearing of this appeal and they may be re-produced *verbatim* the same as follows;

> **"(අ) අභියාචකගේ ඉල්ලීම හා සම්බන්ධිත නීතිය නිසි පරිදි සැලකිල්ලට නොගෙන පරිපාලන කටයුක්තක් ලෙස සඳහන් කර බැහැර කර ඇත.**
>
> **(ආ) අභියාචකගේ ඉල්ලීම සම්බන්ධ ආණ්ඩුක්‍රම ව්‍යවස්ථා නීතිය, පළාත් සභා නීතිය සහ ගැසට් නිවේදන සම්බන්ධයෙන් සලකා බලා නොමැත.**
>
> **(ඇ) එමෙන්ම විනිශ්චය අධිකාරයකට බලයක් නොමැතිව කරනු ලබන නියෝගයක වලංගු තාවය පිළිබඳ කිසිදු සඳහනක් නොමැත.**

(ඇ) ස්වභාවික යුක්ති මූලධර්ම අනුව වගඋත්තරකරුවන් කටයුතු කර ඇති බවට වැරදි නිගමයකට පැමිණීම.”

Literal translation of the same into English reads thus;

“(a) The Appellant's appeal had been dismissed treating it as an administrative matter without giving due consideration to the law relating to it;

(b) The Constitutional Law, Provincial Council Law and Gazette Notifications relating to the Appellant's application had not been considered;

(c) No mention as to the *vires* of a decision made by a tribunal without a lawful authority;

(d) Arriving at an erroneous conclusion that the Respondents had acted in accordance with the principles of natural justice.”

Since, the grounds of appeal so urged by the Appellant appear to be interwoven, it would I think, be expedient and proper to consider them all together in a consolidated manner.

Article 154G of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as ‘the Constitution’) confers upon every Provincial Council established under Article 154A of the Constitution enacted by the 13th amendment to the Constitution, subject to the provisions of the Constitution to make statutes applicable to the province for which it is established, with respect to any matter set out in list I of the Ninth Schedule which is referred to as the “Provincial Council List” and item 19 in the Ninth Schedule thereto, being the subject of Co-operatives, the Sabaragamuwa Provincial Council had by virtue of the powers so conferred upon it by the Article 154G of the Constitution, enacted the Co-operative Societies Statute of the Provincial Council of Sabaragamuwa Province of No. 3 of 2007.

Furthermore,the Provincial Councils Act No. 42 of 1987 as amended (hereinafter called and referred to as 'the Act') enacted by the Parliament to provide for the procedure to be followed in Provincial Councils; for matters relating to the provincial public service; and for matters connected therewith or incidental thereto, enacts in its section 32(1), (2) and (2A) as follows;

> "(1) Subject to the provisions of any other law the appointment, transfer, dismissal and disciplinary control of officers of the provincial public service of such Province is hereby vested in the Governor of that Province.
>
> (2) The Governor of a Province may, from time to time, delegate his powers of appointment, transfer, dismissal and disciplinary control of officers of the provincial public service to the Provincial Public Service Commission of that Province.
>
> (2A) The Provincial Public Service Commission of a province may, subject to such conditions as may be prescribed by the Government of that Province, delegate to the Chief Secretary or any officer of the provincial public service of that Province, its powers of appointment, transfer, dismissal, and disciplinary control of officers of the provincial public service.

Moreover, the Act in its section 33(1) enacts that,

> "(1) There shall be a Provincial Public Service Commission for each Province which shall consist of not less than three persons appointed by the Governor of that, Province. The Governor shall nominate one of the members 'of the Commission to be the Chairman".

Upon a careful consideration of sections 32(1),(2), (2A) and 33(1) of the Act in its totality makes it abundantly, clear without an iota of doubt that the power so vested in the Governor of that Province with regard to the appointment, transfer, dismissal and disciplinary control of officers of the provincial public

service may from time to time,be delegated to the Provincial Public Service Commission of that Province so established by section 33(1) of the Act; and that, that Provincial Public Service Commission of a province may subject to the conditions as may be prescribed by the Government of that Province, delegate to the Chief Secretary or any officer of the Provincial Public Service Commission its powers of appointment, transfer, dismissal, and disciplinary control of officers of the Provincial Public Service.

Upon a careful scrutiny of the letter dated 27.02.2012, annexed to the joint statement of objections of the 1st, 2nd, 3rd, 5th, 6th and 7th Respondents marked as '**එ2**' andfiled in the High Court of the Province, it becomes manifestly, clear that the Secretary to the Provincial Public Service Commission of the Sabaragamuwa Province had thereby, (**එ2**) informed the 3rd Respondent that he had by order of the Provincial Public Service Commission of the Sabaragamuwa Province, been appointed with immediate effect to cover up the duties pertaining to the Co-operative Development Commissioner/ Registrar of the Sabaragamuwa Province until such time as permanent appointment may be made thereto.

Also, It becomes manifestly, clear upon a careful scrutiny of the letter dated 01.09.2014, annexed to the joint statement of objections of the 1st, 2nd, 3rd, 5th, 6th and 7th Respondents marked as '**එ1**' filed in the High Court of the Province, that the Secretary to the Provincial Public Service Commission of the Sabaragamuwa Province had thereby, (**එ1**) appointed with effect from 01.09.2014, the 2nd Respondent to act as the Co-operative Development Commissioner of the Sabaragamuwa Province in terms of the letter of the Chief Secretary of that province bearing No. CS 1513 එ/VI and dated 28.08.2014.

Applying the presumption of regularity arising out of illustration "d" of section 114 of the evidence ordinance which enacts that; "The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and

private business in their relation to the facts of the particular case. **(d) the judicial and official acts have been regularly performed**;" that **it is presumed in law** that the Secretary to the Provincial Public Service Commission of the Sabaragamuwa Province had by the letters of appointment marked as ඵ1 and ඵ2, made those two appointments appointing the 3rd and the 2nd Respondent to the respective positions mentioned therein and with effect from the date as stipulated by order of the Provincial Public Service Commission of Sabaragamuwa Province upon whom the power of appointment of those two public officers had duly, been conferred by the Governor of the Sabaragamuwa Province by virtue of the powers vested in him by section 32(2) of the Act.

Since, this is a rebuttable presumption, the burden of proof will solely, lie on a person who would assert on the contrary. However, it is significant to observe that the Appellant had not in any manner, even made an attempt to rebut this presumption of regularity so arising out of illustration "d" of Section 114 of the Evidence Ordinance by proof on the contrary. Hence, it remains unchallenged and uncontroverted.[Emphasis is mine]

Moreover, section 2 of the Statute enacts thus;

> "(1)There may be appointed a Registrar of Co-operative Societies for Sabaragamuwa Province of Sri Lanka thereof and such number or Deputy, Senior Assistant or Assistant, Registrars as maybe necessary.
>
> (2) The Provincial Minister may, by general or special order, confer on any Deputy, Senior Assistant or Assistant registrar all or any of the powers of a Registrar under this Statute or under any rules made thereunder.
>
> (3) The person appointed to be, or to act for the time being as, the commissioner of Co-operative, Development, shall have and may exercise the same powers as are vested in the Registrar of Co-operative Societies

by this Statute and by any rules made under or deemed to be made thereunder.

(4) Each of the persons appointed to assist the Commissioner of Co-operative Development shall have and may exercise such of the powers of the Registrar under this statute and under any rules made or deemed to be made thereunder as may be specified by the Provincial Registrar in any general or special order made under this section."

It is to be observed that, in terms of Section 2(3) of the Statute, the person appointed to be, or to act for the time being as, the commissioner of Co-operative, Development-the 3rd Respondent to the instant application in this instance, shall have and may exercise the same powers as are vested in the Registrar of Co-operative Societies by the Statute and by any rules made under or deemed to be made thereunder.

Upon a careful analysis of Section 2 of the Statute, Section 2(3) and (4) thereof, in particular, read together with Section 32 (2) of the Act, it becomes abundantly, clear without an iota of doubt that the 2nd and 3rd Respondents had duly, been appointed by the Provincial Public Service Commission of Sabaragamuwa Province by virtue of the powers conferred upon it by the Governor of the Sabaragamuwa Province by virtue of the powers vested in him by Section 32(2) of the Act to act in the capacity of the Registrar/ Co-operative Development Commissioner of the Sabaragamuwa Province.

In the circumstances, it clearly, appears that the act of the 3rd Respondent which culminated in the issuance of the notification calling for detailed report from the Appellant with regard to his appeal as manifest from the communication annexed to the Petition filed by the Appellant in the High Court along with his application marked as "ඔ10" and the decision made by the 2nd Respondent pursuant to the appeal preferred to him by the Appellant from the arbitral award (ඔ12) which decision was sought to be quashed by the

Appellant in the said application, were acts/decisions made by both of them, namely; the 3rd and the 2nd Respondent to the instant appeal, acting solely within the powers vested in each of them as enumerated above, and therefore, both of those acts/decisions (ඉඋ**10**) and (ඉඋ**12**) respectively, made by the 3rd and 2nd Respondents to the instant appeal, were acts/decisions (ඉඋ**10**) and (ඉඋ**12**) which were *intra-vires* of the powers so vested in each of them and they are therefore, entirely, lawful and justifiable.

Upon a careful perusal of the decision (ඉඋ**12**) sought to be quashed in his application before the High Court of the Province by the Appellant in its totality and in its correct perspective, it is abundantly, clear that the 2nd Respondent had made his decision in appeal (ඉඋ**12**) upon a careful consideration of the appeal so preferred to him by the Appellant (ඉඋ**10**) as well as the further details so called for by the 3rd Respondent in his capacity as the then, Acting Registrar/ Co-operative Development Commissioner (ඉඋ**11**) from the Appellant thus, affording him a reasonable opportunity to be heard in support of his appeal in writing as empowered by section 58 (5) of the Statute thereby, properly, adhering to, and complying with the principles of natural justice as laid down by Court in the decision in Colombo South Multipurpose Co-operative Society Ltd Vs. Co-operative Employee's Commission 1997 [2] SLR 225.

In view of the foregoing, I would hold that the appeal is not in any manner, entitled to succeed both in fact and law on any of the grounds of appeal so urged by the Appellant as enumerated above and therefore, the appeal cannot sustain both in fact and law.

It was contended by the 4th Respondent that appeal should be dismissed *in-limine* as the Appellant had not prayed for a writ of *certiorari* to quash the arbitral award made by the 5th to 7th Respondents (ඉඋ**5**) for; under the circumstances, granting of a writ of *certiorari* to quash only the decision made by the 2nd Respondent in appeal (ඉඋ**12**) would become futile inasmuch as

granting of a writ of *certiorari* to quash only the decision of the 2nd Respondent in appeal (ඔ12) without quashing the arbitral award (ඔ5) would serve no purpose.

It may now, be examined.

It was observed by this Court in CA/WRIT/ 591/2021-Decided on 12.01.2024 that, "After reviewing all such authorities of higher courts, I take the view that the Writ Court is not mandatorily bound to refuse an Application if it observes that (a). granting a Writ would not be needful to remedy the grievances of the Applicant, (b). no purpose is served by issuing a writ.

None of those previous judgements have expressly curtailed the discretion of the Review Court but have only implied that the Court, under usual circumstances, should not issue a Writ if the result would be a futility. How the court should exercise its discretion upon an objection on futility should be decided based on the facts and circumstances of each case, for the best interest of justice, without restricting its jurisdiction to a rigid rule as such."

In the instant application, the Appellant had in prayer "ඣ" of his petition filed in the High Court of the Province had only sought a writ of *certiorari* to quash only the decision made by the 2nd Respondent in appeal (ඔ12) only on the grounds urged in paragraph 17 "ඤ" , "ඣ", "ඥ" of his petition, all of which were given a detailed consideration by this Court herein before in this Judgement.

In the circumstances, even, if, it is to be assumed for the sake of the argument for a moment that writ of *certiorari* is issued by the High Court of the Province quashing only the decision made by the 2nd Respondent in appeal (ඔ12), yet, the liability to pay the amount specified in the arbitral award (ඔ5) would still, be on the Appellant in the absence of further order for a mandate in the nature of a writ of *certiorari* to quash the arbitral award (ඔ5).

Hence, it becomes abundantly, clear that under those circumstances enumerated above, the mere issuance of writ of *certiorari* to quash only the

decision made by the 2nd Respondent in appeal (පැ12) would become futile and therefore, it would serve no purpose whatsoever, inasmuch as the liability to pay the amount specified in the arbitral award (පැ5) would still, be on the Appellant notwithstanding the issuance of a writ of *certiorari* by the High Court of the Province to quash only the decision made by the 2nd Respondent in appeal (පැ12).

I would therefore, hold that the contention so advanced by the learned Counsel for the 4th Respondent is entitled to succeed in law and as such it should be upheld.

In view of the foregoing, I am in total agreement with the judgement of the learned High Court Judge of the Province.

I would thus, proceed to dismiss the appeal with costs of this Court and below.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL