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 Writs of Certiorari, Mandamus, Quo Warranto and Prohibition in terms of Article 140 of the Constitution.

CA (Writ) Application No. 748/2025

1. Muhammadu Nawli Muhammadu
   Naqif
   No. 16/1, Dehipitiya,
   Varakamura, Ukuwela.

2. Kanchana Gayashri Rathnasuriya,
   No. 04, Guralawela Dakuna,
   Ukuwela,

3. Muhammadu Amanullah Alim Muhammadu
   Naimullah
   No. 5/B, Makubura,
   Ukuwela.

4. Piyawansha Pradeep Kumara
   No. 193, Gurulawela North,
   Ukuwela.

5. Niluka Sudarshani
   No. 2/38, Ukuwela Watte,
   Nagolla, Ukuwela.

6. Iresha Priyantha Shiromali Malwatte
   No. 32, Redbanagama,
   Matale.

7. Daduhale Gedara Nalin
   No.36/1, Morahelethenna,
   Matale.

8. Inoka Chandima
   No. 68/2, Ukuwelawatte,
   Nagolla Road, Ukuwela.

9. Achala Sumudumali Rajakaruna Thilakarathne

   Buwanakavila, Thennewela,
   Raithalawela, Ukuwela.

10. Shermali Kumari Ekanayake

    No. 126/23/B, Wariyapola,
    Katudeniya, Matale.

11. Nalin Sadath Sujeewaka Kandegedara,

    No. 6/1/A, Katuaththamada,
    Owilikanda, Matale.

12. Samantha Dharmasena

    No. 10/C, Kirimetiyawa,
    Owilikanda, Matale.

Petitioners

Vs.

1. A.M.K.C.K. Athapattu,

   Commissioner of Local Government,
   Department of Local Government Complex,
   Pallekele,
   Kundasale.

2. G.H.M.A. Premasinghe,

   Chief Secretary,
   Central Province,
   Provincial Council Complex,
   Pallekele, Kundasale.

3. Manoj Kumara,

   No. 44, Kirimatiyawa, Owilikanda,
   Matale.

4. Chaminda Bandara,

   No. 68, Thibbatuwawa,
   Thenna, Matale.

5. M.M.W. Bandara,

   No. 33A, Udupihilla,
   Matale.

6. H.A.M.S. Hettiarachchi,

   No. 36, Sarwodaya Road,
   Nagahathenna, Matale.

7. K. Jnanarathne

   No.50/25/2, Kohobiliwala,
   Matale.

8. Karunajeewa Thennakoon,

   No.38, Wariyapola,
   Katudeniya, Matale.

9. G.G.Nimal Karunathilake,

   No. 29, Nawarathnagoda,
   Udathenna,
   Matale.

10. M.K.M.J. Liyanage,

    No. 16/8E, Dematagolla,
    Ukuwela.

11. Seetha Kumarihami,

    No. 197/1, Nagolla,
    Ukuwela.

12. Sisirakodi Ranasinghe.

    No. 30/2, Kendagollamada,
    Wehigala.

13. Pradeep Wijethilake

    No. 11, Wegala Road,
    Elkaduwa.

14. Krishantha Fernando,

    No. 144/18/1, Thawalokoya,
    Ukuwela.

15. N.T.R.B.M.A.S.R. Thilakarathne,

    Buwanekawilla, Thennewela,
    Ukuwela.

16. Mohomed Rafi,

    No. 73/A, Gurukete Marukona,
    Ukuwela.

17. Hon. Attorney General,

    Attorney General's Department,
    Hultsdorp,
    Colombo 12.

Respondents

Before	**:**	**Hon. Rohantha Abeysuriya PC, J.(P/CA)**
	:	**Hon. K. Priyantha Fernando, J.(CA)**
Counsel	:	Dr. Wijeyadasa Rajapakse PC with Dasun Nagashena, Rakitha Rajapakshe, Madhawa Jayawardhene & S. Ekanayake instructed by Danuka Lakmal for the Petitioner. Medhaka Fernando SC for the 1st, 2nd & 17th Respondents.
Written Submissions on	:	03.12.2025 for the Petitioners. 18.12.2025 for the 1st, 2nd and 17th Respondents.
Supported on	:	06.11.2025
Decided on	:	14.01.2026

K. Priyantha Fernando, J.(CA)

The 1st to 12th Petitioners have filed the instant Petition dated 14th July 2025 alleging that the election of the 16th Respondent as the Chairman of the Ukuwela Pradeshiya Sabah and the election of the 16th Respondent as the Vice Chairman of the Ukuwela Pradeshiya Sabah on 20th

June was unlawful. The Petitioners state that the procedure adopted by the 1st Respondent on 20th June 2025 to elect the Respondents was unlawful as well. The Petitioners seek writs of Certiorari and/or Quo Warranto to quash the appointments of the 9th Respondent and the 16th Respondent. They also seek writ of Certiorari to quash the proceedings of the Ukuwela Pradeshiya Sabah dated 20th June 2025 and a writ of Mandamus on the 1st respondent to conduct a fresh election to elect the Chairman and Vice Chairman of the Ukuwela Pradeshiya Sabah.

When this matter was taken up for support on 6th November 2025, the parties agreed that the issuance of notice and/or interim relief could be decided by way of written submissions and fixed the matter for Order.

BACKGROUND:

The petitioners and the 3rd to 16th Respondents are members of Ukuwela Pradeshiya Sabah who were elected in the local government election conducted in April 2025 and their names are gazetted in the Extraordinary Gazette dated 31st may 2025. None of the parties were able to obtain the majority of seats and the seats secured by the political parties are set out in paragraph 11 of the petition.

Section 66(C)(1) of the Local Government Election Act provides that if any recognized political party or independent group has not obtained a number of seats exceeding 50%, the presiding officer shall conduct the election as provided in the Act.

Out of the said seats, 11 seats were secured by Jathika Jana Balawegaya, while 7 seats were secured by Samagi Jana Balawegaya. The remaining 9 seats were secured by the other political parties.

In terms of Section 66(D)(6) of the Local Authorities Elections (Amendment) Act No. 22 of 2012, if two or more names are proposed to be elected as Chairman/mayor of the local authority, the presiding officer is obliged to follow the procedure laid down therein. It reads that:

"*Where two or more names of members are proposed and seconded for election as Mayor, the mode of election shall be by open voting, and the presiding officer shall the votes by calling the name of each member present and asking him how he desires to vote and recording the vote accordingly. A member may decline to vote and in such a case, the presiding officer shall record the fact of such declining to vote*."

THE POSITION OF THE PETITIONERS:

Firstly, they state that the 1st respondent unlawfully or illegally conducted a 'secret ballot' to elect the Chairman, despite sixteen (16) of the twenty-seven (27) members of the Sabah openly requesting an open vote to elect the Chairman.

Secondly, they state that the 1st Respondent unlawfully presided over the election conducted to elect the Vice-Chairman of the Sabah, despite the law dis-entitling the 1st Respondent from presiding over such election.

It was contended by the learned President's Counsel for the Petitioners that there are two stages in which the Presiding Officer is obliged to act, namely:

i. The Presiding Officer shall take votes by open voting calling the name of each member present and asking how he or she desires to vote. The Presiding Officer has no discretion or option other than to conduct an open vote with regard to the mode of election of the Chairman/Mayor.
ii. In terms of Section 66(D)(7), the Presiding Officer is bound by the result of the open vote with regard to the mode of conducting the election of the Chairman/Mayor and to conduct the election accordingly.

ANALYSIS AND THE CONCLUSION:

When deciding this matter, it is vital for this Court to consider the sequence of events which has led to the election of the 9th Respondent as the Chairman of the Sabah. According to the official minutes of the first meeting dated 20th June 2025 marked as X:

Page 3 of X-The names of the 9th Respondent and the 2nd Petitioner are proposed for the post of Chairman of the Sabah.

Page 4 of X-The 1st Respondent who presided over the meeting asks the Pradeshiya Sabah members to determine whether the poll to elect the Chairman of the Sabah should be by secret ballot or open ballot.

Page 4 of X-The 14th Respondent proposed an open vote to elect the Chairman.

Page 4 of X-The 9th Respondent proposed a secret vote to elect the Chairman.

Page 5 (last paragraph) and page 6 (1st paragraph) of X-Since there were two proposals as to the mode of election to elect the Chairman, the 1st Respondent decided to call each member of the Council by name and request them to express their choice as to the mode of election in writing and thereafter put their written choice as to the mode of election inside the ballot box.

Page 5 (3rd paragraph) of X-Pursuant to following the above process, 14 members opted to hold a secret vote to elect the Chairman, while 13 members opted to hold an open vote to elect the Chairman.

Page 5 (last paragraph) of X-After secret vote was conducted to elect the Chairman, the 9th Respondent received 14 votes, while the 2nd Petitioner received 11 votes.

The above sequence of events shows that the 1st Respondent conducted a secret ballot to elect the Chairman of the Pradeshiya Sabah, based on the choice made by 14 of the 27 council members to opt for a secret vote to elect the Chairman. The procedure adopted by the 1st Respondent to determine the mode of the election to elect the Chairman was to call each member by name and request them to express their choice as to the mode of election in writing and thereafter put their written choice as to the mode of election inside the ballot box.

When this matter was supported on 10.10.2025, objection was raised by the learned State Counsel that this application is not maintainable in view of the judgment in CA/WRT/700/2025 dated 14.07.2025.

In the said case, this Court has held as follows:

"*It is apparent on the face of the two texts, that there is a serious discrepancy between the two versions and it is this particular sub section of 66D of the Ordinance which is the bone of contention in the instant matter. The inconsistency between the Sinhala and English text are of such nature that those cannot be reconciled in order to ensure harmonious application of the provisions*".

It was contended for the Petitioners that the 1st Respondent performed her duty in compliance with Section 66(D) (6) by calling for a vote of the members to decide whether the election should be held by open vote or by secret ballot. Accordingly, 16 members expressed and declared that it should be conducted by open vote, while 11 members demanded a secret ballot. It was further contended that such a situation did not arise in the case cited above; that even assuming that the first respondent had discretion in terms of the Sinhala Act, once she exercised that power by calling upon the members to decide whether they wished to have an open vote or a secret ballot for the election of the Chairman, she had no power or authority to reverse or rescind that outcome; she could not substitute her own discretion after the members had made their decision on her direction; once the 1st Respondent decided that issue, the question arises as to how she got the authority to reverse or set aside or rescind her own order which self-contradictory.

According to the video clip produced by the 1st Respondent, which reflects the proceedings of the meeting it is unclear whether 16 of the 27 members had in fact openly requested an open vote to elect the Chairman. Such position is also reflected in the official minutes of the meeting dated 20th June 2025 marked as X. thus, the position of the Petitioners has become a disputed question of fact.

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මුලසුන දරන නිලධාරී :

සභාවේ සභිකවරුන් අතර සභාපතිවරයා තෝරාගැනීමේ ඡන්ද ක්‍රමය තෝරා ගැනීම සම්බන්ධයෙන් එකඟතාවයකට පැමිණීමට නොහැකි වී තිබෙන බව මා හට නිරීක්ෂණය වන අතර ඡන්ද ක්‍රමය තෝරාගැනීම සඳහා සභාවේ පැමිණ සිටින සාමාජිකයින් අතර සම්මතයක් ඇති කර ගත යුත්තේ කුමන ආකාරයට ද යන්න එනම් ඡන්ද ක්‍රමය පිළිබඳ යෝජනා සම්මතයක් ලබා ගැනීම ලිඛිතව සිදු කළ යුතු ද වාචිකව සිදු කළ යුතු ද යන්න පළාත් පාලන ආයතන ඡන්ද විමසීම් ආඥා පනතේ නිශ්චිතව සඳහන් නොවේ. එසේම රාජ්‍ය පරිපාලන පළාත් සභා හා පළාත් පාලන අමාත්‍යාංශය මගින් නිකුත් කර ඇති මාර්ගෝපදේශයේ සඳහන් කර ඇත්තේ අපේක්ෂකයින් කිහිප දෙනෙක් තරග කරන ඡන්ද විමසීමකදී තෝරා පත්කර ගැනීමේ ක්‍රමය පිළිබඳ සභිකයින් අතර මතභේදයක් ඇති වුවහොත් එහිදී එක් එක් සභිකයාගේ නම අඩගසා ඒ සම්බන්ධයෙන් ඡන්ද විමසීමක් සිදු කර බහුතරයේ එකඟතාව මත ඡන්දය විසීමේ ක්‍රමය තීරණය කළ යුතු බවයි. තවදුරටත් එම පැහැදිලි කිරීම් වල සභිකයින්ගේ කැමැත්ත පරිදි රහස්‍යභාවය රැකෙන පරිදි කැමැත්ත විමසීම සුදුසු බවත් සඳහන් කරනවා.

ඒ අනුව මා විසින් මෙම අවස්ථාවේ ගරු සභිකවරුන් වෙත ලිඛිත පහසුකම් සලසා දෙන අතර එක් එක් සභිකයාගේ නම අඩගසන අවස්ථාවේදී අසුනෙන් නැගිට තමන්ගේ කැමැත්ත විවෘත ඡන්ද ක්‍රමය පිළිබඳව ද රහස්‍ය ඡන්ද ක්‍රමය පිළිබඳව ද යන්න ඡන්දය භාවිතා කරන අවස්ථාව සඳහා සකසා ඇති ඡන්ද කුටිය තුළදී ලිඛිතව සටහන් කර ඉදිරියේ තබා ඇති ඡන්ද පෙට්ටිය වෙත බහාලන ලෙස සියලුම සභිකයින් වෙත දන්වා සිටිනවා.

සභාවේ සියලුම සභිකයින්ගේ නම අඩගසා ඡන්ද ක්‍රමය තීරණය කිරීමට ලිඛිත පහසුකම් සලසන ලදී.

මුලසුන දරන නිලධාරී -

ඡන්ද ක්‍රමය කුමක්ද යන්න තෝරා ගැනීම සඳහා පවත්වන ලද ඡන්ද විමසීම අනුව විවෘත ඡන්දයක් මගින් සභාපතිවරයා තෝරා ගත යුතු බවට දහතුන් දෙනෙක් ද (13) රහස්‍ය ඡන්දයකින් සභාපතිවරයා තෝරා ගත යුතු බවට සභිකයින් දහ හතර දෙනෙක් ද (14) ඡන්දය ප්‍රකාශ කර තිබෙනවා. ඒ අනුව ඡන්ද දහ හතරක් (14) ලබා දෙමින් වැඩි ඡන්ද එකකින් රහස්‍ය ඡන්දය සුදුසු බවට තීරණය වීම නිසා සභාපතිවරයා තෝරා ගැනීම සඳහා රහස්‍ය ඡන්ද ක්‍රමය භාවිතා කරනවා.''

The Court of Appeal does not exercise writ jurisdiction where the major facts are in dispute. In the case of Dr. Puvanendran and another v. Premasiri and two others-(2009) 2 Sri L.R. 107 [2009 BLR 65] the Supreme Court held that the Court will issue a writ only if the major facts are not in dispute and the legal result of the facts are not subject to controversy.

In *Thajudeen v. Sri Lanka Tea Board and another* (1981) 2 Sri L.R. 471, the Court of Appeal held that a disputed question of fact can arise when the Respondents dispute a major fact and the Petitioner too has failed to provide incontrovertible evidence regarding the existence of that fact.

"*A comparison of the respective positions taken up by the Respondents and the petitioner unmistakably shows that the claim of the Petitioner, that he is entitled to the amount set out in his petition, is denied by the Respondents and that such denial is not based only upon questions of law alone. One of the main grounds of objections raised in respect of the said claim is that the said sum of money is not, in fact, due. This objection is one based upon questions of fact. The Respondents dispute the correctness of the figures relating to the purchases of the green tea leaf. They deny that such questions of green tea leaf were in fact purchased as claimed by the Petitioner. The very foundations of fact, which the Petitioner must establish to prove that he is, in fact, entitled to claim the payment of the sum of money, which he seeks to compel the Respondents to pay him, are therefore, not only not admitted by the Respondents but are also very strenuously denied and disputed by the Respondents. The basic and fundamental issues of fact the proof of which is essential to claim for the relief the Petitioner seeks in these proceedings, have in the first instance to be established by the Petitioner. In the absence of incontrovertible proof or an admission by the Respondents of such matters of fact, the Petitioner's claim to the payment of the said sum of money cannot be maintained*." (Pages 473-474)

Moreover in *Dr. Puvanendran and another v. Premasiri and two others* (supra), the Supreme Court held that it is justified for a writ court to conclude that an application deals with disputed facts even if 'there is significant evidence' to support the Petitioner's factual position, when the Respondent denies/disputes that factual position. Therefore, the standard of proof required of a Petitioner to establish that a major fact is not in dispute is to adduce 'incontrovertible evidence' of that fact on the face of the Petition.

It was contended by the Respondents that in the instant case, there is no such 'incontrovertible evidence' on the face of the Petition to show that 16 of the 27 council members had in fact openly requested an open vote. The minutes of the meeting marked as X supports this contention.

Nevertheless, I am not inclined to accede to the argument that, if 16 members expressed and declared that it should be conducted by open vote, while 11 members demanded a secret ballot, the 1st Respondent has no discretion to hold a secret ballot with regard to the mode of election. It is clearly elicited by the minutes marked X, that there had been clashing condition with threatening verbal cross talks among the members.

Furthermore, a section of members has cautioned the 1st Respondent that if open vote is taken it would lead to political revenges. It does appear that the 1st Respondent decided to adopt the most prudent course of action under such circumstances which in the view of the said Respondent would protect the confidentiality of the vote and consequentially the integrity of the process. In these circumstances, the 1st Respondent using her discretion in favour of holding secret ballot when deciding the mode of election for the Chairman cannot be considered as irrational, unreasonable, unjustifiable or arbitrary.

The second argument raised by the Petitioners is that the 1st Respondent unlawfully conducted the election to elect the Vice-Chairman of the Council, despite the law requiring the Chairman of the Council to conduct the election to elect the Vice-Chairman of the Council.

Section 66 F (1) of the Local Authorities Elections Ordinance (as amended) reads as follows: "*The first Deputy Mayor of a local authority shall be elected at the first meeting of the Council held under section 66C, presided over by the newly elected Mayor*"

The above statutory provision does not state that the Chairman of the Council must himself/herself conduct the election to elect the Vice-Chairman of the Council. It only states that Vice-Chairman should be elected at the first meeting of the Council which is 'presided over by the Chairman'.

Furthermore, the argument of the respondents that it is more consonant with the objectives and scheme of the Local Authorities Ordinance for the 1st Respondent to conduct the election of the Vice-Chairman as opposed to the Chairman of the Council, since the Chairman is also a member who propose, second and/or vote for the Vice-Chairman election is tenable.

Moreover, the minutes marked as X shows that the administrative task of conducting the election of the Vice-Chairman has been done by the 1st Respondent on the concurrence of the Chairman of the Council, who remained presiding at the meeting. None of the Petitioners have raised any objection to this procedure and thus acquiesced to the same.

For the foregoing reasons, formal notice is refused and the Petition is dismissed *in limine* without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal