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

In the matter of an application for mandate in the nature of Writs of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 625/2025

1. K. Jayantha Sesiri
   No.66/3/3,
   Masdeniya,Pattigala.
   Beralapanathara.

2. Nishantha Rubasinghe
   Millawa Kade,
   Moragala,
   Kirilipana.

3. K.P. Upul Priyantha
   New City Tailors,
   Main Street,
   Urubokka.

4. Suranga Lakmal Edirisinghe
   Wew Liyadda,
   Beralapanathara.

5. I. Lucky Chathuranga
   "Udaya"
   Pothuhalgoda,
   Pasgoda.

6. R.D. Ruwan Chamara
   No.320A,

Ambagahahena,
Hulankanda Road,
Heegoda.
Urubokka.

7. W.D. Asela Kumara
Munasinghe
No.440A,
Hemagiri,
Urubokka.

PETITIONERS

-Vs.-

1. Bandula Harischandra
Governor of the Southern Province,
Office of the Governor, Lower Dickson Road,
Galle.

2. Sumith Alahakoon
Chief Secretary of Southern Province,
Chief Secretary's Office,
S.H. Dahanayake Mawatha,
Galle.

3. Beralapanathara Multi-purpose Co-operative Society
"Samukirana"
Urubokka.

4. Secretary
Beralapanathara Multi-purpose Co-operative Society
"Samukirana"
Urubokka.

5. Chandrika Wickramasinghe
Co-operative Development Commissioner of Co-operative Development/Registrar of Co-operative Societies of the Southern Province,
Department of Co-operative Development-Southern Province,
147/3, Pettigalawatta,
Galle.

6. W.A.K. Nirosha Changanie
Assistant Commissioner of Co-operative Development (acting),
Assistant Commissioner's Office of Co-operative Development,
No.301, Peekwella,
Matara.

6A. Mallika Seneviratne
Assistant Commissioner of Co-operative Development,
Assistant Commissioner's Office of Co-operative Development,
No.301, Peekwella,
Matara.

7. M.M. Nismi
Co-operative Development Officer,
Assistant Commissioner's Office of Co-operative Development,
Matara.

8. Shantha Rubasinghe
No.16, Kuruduwatte,
Gomil, Marawala.

9. H.G. Lasantha Erandhani
Sampath Uyana,
Pattigala,
Beralapanathara.

RESPONDENTS

Before : Dhammika Ganepola, J.

Adhithya Patabendige, J.

Counsel : Shaheeda Barrie with Naveen Maharachchi for the Petitioner.

Manohara Jayasinghe, D.S.G. With I.Randeny, S.C. for the 1st, 2nd, 5th, 6th and 7th Respondents.

Sanjeewa Jayawardena, P.C. with Rukshan Senadeera and Shehani Alwis for the 3rd and 4th Respondents instructed by Sanath Wijewardena.

Upul Kumarapperuma, P.C. with Duvini Godagama for the 8th and 9th Respondents Instructed by Darshika Nayomi.

Argued on : 25.07.2025, 04.08.2025, 06.08.2025

Written Submissions	:	Petitioner	: 27.08.2025
tendered on		1st, 2nd, 5th to 7th Respondents	: 26.08.2025
		8th and 9th Respondents	: 26.08.2025
Decided on	:	30.09.2025	

Dhammika Ganepola, J.

The Petitioners of this application are duly elected Directors of the 3rd Respondent, Multipurpose Cooperative Society. In the instant application, the Petitioners *inter alia* challenge the Statute known as the Southern Provincial Council's No. 6 of 2019 Cooperative Society Precept marked P1 (hereinafter sometimes referred to as the "Statute") and the decision made by the 5th Respondent to appoint the 7th, 8th, and 9th Respondents to the Board of Management of the 3rd Respondent Society as reflected in letter marked P16.

In terms of the Constitution of the 3rd Respondent Co-operative Society (marked P4), the Society consists of the following hierarchy, namely, Local Branches, General Committee and Board of Directors. Furthermore, according to the Constitution of the 3rd Respondent Society, Local elections shall be conducted to appoint members to the local Branch Committees of the Society. Such Branch Committee shall be elected for a period of three years (Article 23(ඇ) of P4). Following these appointments of the Local Branch Committees, members shall then be proportionately selected for the General Committee. The General Committee, in turn, shall select the Board of Directors for the 3rd Respondent Society. The tenure of the General Committee shall be three years (Article 33(3) of P4). It is submitted that the last Local Branch elections had been held on 12th December 2021, and the General Committee had been formed on 24th October 2021. The present Board of Directors had been elected on the same day the General Committee was formed. However, as per Article 55 of the Constitution of the 3rd Respondent Society, the term of office of the Board of Directors shall continue until the assembly of the next General Committee following elections.

The Petitioners state that, the Board of Directors, in collaboration with the Local Branches of the 3rd Respondent Society, was in the process of updating the membership registry of the Local Branches to facilitate the holding of elections and as a result of the same, Local Branches election could not be held in due time. As such, it is claimed that the requirements to be satisfied to for the election of a new Board of Directors had not been satisfied.

The Petitioners contend that while the Petitioners were in the process of updating the registers, the 5th Respondent appointed the 7th, 8th, and 9th Respondents to act as the Board of Management to the 3rd Respondent Society allegedly acting under Section 68(1)(a) of the Statute, considering that the tenure of the Petitioners as Directors of the 3rd Respondent Society had expired, and that the Directors had failed to appoint a new Board of Directors before the expiration of their term of office. Accordingly, the Petitioners had ceased to hold office as Directors of the 3rd Respondent Society.

First, the Petitioners urged that the Statute is *ultra vires* and *void ab initio* on the grounds that:

a. Section 68(5) of the Statute allows political interference in the functioning of the Cooperative Societies which in turn shall enable arbitrary and unreasonable exercise of power by purported appointees;
b. The Statute is inconsistent with the Articles of the Constitution of the Republic;
c. Several penal sections in the Statute and punishments stipulated therein are contrary to the provisions under the Judicature Act.

Second, the Petitioners contend that Section 68 of the Statute could not be invoked in the given instance as in terms of Article 55 of the Constitution (P4) of the 3rd Respondent Society, the term of office of the present Board of Directors had not expired, and a new Board of Directors cannot be elected by the General Committee as the period of office of the present General Committee had not lapsed. Hence, the Petitioners argue that the 5th Respondent has assumed powers arbitrarily and has exercised the power illegally by appointing a new Board of Management.

When this application was taken up for support, the learned President's Counsel for the Petitioner made submissions in support of the application and the President's Counsel and the learned DSG for the respective Respondents made submissions opposing the application. The Petitioners' argument is essentially twofold. First, the Statute marked P1 is unlawful. Secondly, even if the instant Statute is considered to be valid before the law, the decision of the Registrar, as reflected in the letter P16, is *ultra vires* as the 5th Respondent in issuing the said letter P16 has acted in excess of the powers granted by Section 68(1)(a) of the Statute.

At this threshold stage, the Court is required to consider whether the Petitioners have demonstrated the existence of an arguable ground for judicial review that has a realistic prospect of success, which warrants the issuance of formal notices.

It is on the common ground that the last Local Branch election of the 3rd Respondent Society had been held on 2nd January 2021, and the General Committee was formed on 24th October 2021. As per Article 33(3) of the Constitution, the tenure of the General Committee is three years from the scheduled date on which the General Committee was assembled for the first time. The present Board of Directors had also been elected on the same day, i.e., 24th October 2021, the date on which the General Committee was formed.

The 5th respondent in his letter dated 19th May 2025 marked as P16, stated that the Board of Directors of the 3rd Respondent Society had failed to comply with Section 68(1)(a) of the Statute and to hold the election within three months of the expiry of the period of office of the current Executive Committee as required by the Constitution of the Society. Accordingly, the 5th Respondent had appointed the new Board of Management allegedly acting in terms of Section 68(1)(b) of the Statute (marked P1).

The issuance of letter by the 5th Respondent had been due to the alleged failure of the Board of Directors of the 3rd Respondent Society to update the members' register, which is vital for the holding of an election. The Respondents aver that the Petitioners failed to fulfil their duty in facilitating the elections and, in the guise of such failure, attempted to illegally extend their tenure. Accordingly, it is my view that whether the updating of the register, which resulted in the delay of the conduct of election, is in line with the constitution of the 3rd Respondent and the

relevant laws or not, could only be determined by considering all material placed at the stage of hearing.

As per Section 68(1)(b) of the Statute, the Registrar is empowered to consider the current Executive Committee as dissolved and appoint a new Board of Management to administer the society only if the current Executive Committee fails to make arrangements to elect a new Executive Committee to office within three months of the expiry of the period of office of the current Executive Committee, i.e., 23rd January 2024. Therefore, it is important to determine whether the Petitioners, as members of the Board of Directors, had failed to comply with Section 68(1)(a) of the Statute and to elect a *new* Executive Committee as the 5th Respondent claims.

Section 68(1) of the Statute is as follows.

> *"(a) It is the responsibility of the current executive committee of every registered society to make arrangements to elect a new executive committee to office within three months of the expiry of the period of office of the current executive committee.*
>
> *(b) If that responsibility is not discharged as stated, the registrar may consider the current executive committee as dissolved and appoint a Board of Management to administer the society. That Board of Management will enjoy the powers, privileges and rights of an executive committee duly appointed by the society."*

As per Section 76 of Statute, the term 'Executive Committee' shall mean the management body that has assumed to manage the affairs of the cooperative society, the Board of Directors of a registered society and includes persons appointed by the registrar under articles 43, 44 and 55. Thus, in the instant case the Board of Directors of the 3rd Respondent Society shall fall within the purview of the definition of "Executive Committee" as provided under the Statute.

As per Article 55 of the Constitution (P4), the term of office of the Board of Directors (Executive Committee) shall cease on the first date of

assembly of the new General Committee constituted after the Local Branch elections.

> *55: තෝරා පත්කර ගන්න ලද අධ්‍යක්ෂකවරුන්ගේ නිල කාලය ඊලඟ ප්‍රාදේශික කාරක සභා තෝරා පත්කර ගැනීමෙන් පසු සංස්ථාපනය වන මහා සභාවේ පළමුවෙනි රැස්වීමේදී අවසන් වන්නේය .එසේ නිලය අවසන් වන අධ්‍යක්ෂකවරයෙකු නැවත පත්කර ගත හැකිය .එහෙත් එසේ කළ හැක්කේ ඔහු ප්‍රාදේශික නියෝජිතයෙක් නම් පමණි.*

Article 33(2) of the Constitution (P4) stipulates that the first meeting of the General Committee shall be held before the expiration of three months from the Local Branch elections.

> *33(2): ප්‍රාදේශික කාරක සභාවලට නියෝජිතයන් තෝරා පත්කර ගැනීමෙන් පසු මාස තුනක් ඉකුත්වීමට පෙර මහසභාවේ පළමුවෙනි රැස්වීම පැවැත්විය යුතු වන්නේය .*

Accordingly, it is clear that as per the Section 68(1)(a) of the Statute, the Executive Committee is required to make arrangements to summon the General Committee within three months from the Local Branch elections. If the aforesaid responsibility is not discharged, the Registrar is empowered to take appropriate steps as reflected in Section 68(1)(b) of the Statute P1. However, I hold the view that whether the Registrar was empowered to take such appropriate steps, especially in the backdrop where the Petitioners claim that they required further time to update the register is a matter that has to be looked into upon carefully considering the material placed at the hearing.

Another contention taken up by the Petitioners is that Section 68(1)(c) does not empower the Board of Management to hold elections of the Local Branches. The Board of Management is empowered only to summon a general meeting of the society and to elect a General Committee from the Local Branches already elected. Section 68(1)(c) is as follows.

> *"That Board of Management should summon a General Meeting of the society as per the constitution and elect an executive committee within a period of 6 months of their appointments."*

In the above circumstances, the Court is of the view that it is necessary to consider whether the Board of Management is authorised to hold elections for Local Branches in view of the power vested under Section 68(1)(c).

The Petitioners at the outset submit, inter alia, that the Statute is *ultra vires* and *void ab initio,* on the grounds set out in the Petition. The

Petitioners have stated that the Statute is inconsistent (item 17 of the Provincial Council List) with the Articles of the Constitution of the Republic and has also been challenged before the Court of Appeal in Writ Application bearing No. 257/2019. The Respondents averred that the Statute came into force after receiving assent from the Governor of the Southern Province on 01.04.2019 and was published in the Gazette (Extraordinary) No.2118/40 dated 09th April 2019. Hence, the application to challenge such a Statute should be dismissed *in limine* on the grounds of undue delay.

The Petitioners further submit that the 5th Respondent, by the impugned letter dated 19th May 2025 (marked P16), directed the appointees of the Board of Management to act under the Gazette bearing No. 297/7 dated 28th December 1977 (X3) to facilitate the holding of an election and the appointment of a new Board of Directors. The said Gazette is enacted under Section 22 of the Cooperative Societies Act, promulgated by the Central Government. The Statute P1 declares that it replaces the operative Act, No. 5 of 1972, amended by Cooperative Acts No. 32 of 1993 and No. 11 of 1992, except for the sentences 9(4), 9(5), 24, 24(c), 25, 26, 28(1), 28(2), 29(1), 29(2), 44(2)(1)(a), 53(2), 58(1)(e), 61(2)(i), 71, 75, "bank" means (a), (b),(c). In view of the above terminology under the preamble of the Statute, it appears that the Statute even replaces Section 22 of the Act which enables the issuance of the instant Statute. The Petitioners submit that even if elections were held, any attempt by the Society concerning the process outlined in the aforementioned Gazette No. 297/7 would be unlawful and *ultra vires*. However, the 3rd and 4th Respondents aver that the argument of the Petitioner is misleading, as the said Gazette No. 297/7 was issued under Article 22 of the Constitution of the Societies, as reflected in the Gazette.

In addition to the defence of undue delay the Respondents have taken up several other preliminary objections including misrepresentation and suppression of material facts. I am mindful that the remedies under judicial review cannot be invoked by those who are guilty of laches, grave misrepresentation and suppression of material facts. Similarly, the fact that the question of laches will not arise if a case of blatant violation of law is established. However, I take the view that facts involving such jurisdictional and other objections, which relate to the maintainability of the application, could be determined after giving due consideration to the relevant laws, Statutes, Gazettes, the provisions of the Constitution of

the 3rd Respondent, and the other circumstances of this case based on the affidavits, at a final hearing and not based on the statements of limited objections. In that event, the Court would be able to consider whether there would be any merit to the objections raised by the Respondents.

In this, I am inspired by the citation of Ms Rakuoane-Linton, referred to in Shama v. Brown-Antoine and Ors [2006] UKPC 57, quoting Jones J. submitted by the Petitioners in their written submissions.

> *"It is not in dispute that what… is required to show at this stage is that an arguable case exists. The purpose for leave is to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error. Permission should be granted where a point exists which merits investigation on a full inter-partes basis with all the relevant evidence and argument on the law"*

Hence, under such circumstances, it is inappropriate and unjustifiable to refuse to issue formal notices on the Respondents. Accordingly, I decide to issue formal notices to the Respondents.

Once the Court is satisfied that there is an appropriate matter to be looked into, another question arises whether the Petitioners are entitled to the interim reliefs sought. In that context, this Court is guided by the settled principles of law related to the granting of interim reliefs such as where does the balance of convenience lie and will irreparable and irremediable mischief or injury be caused to either party.

In the instant application, the Petitioners *inter alia* seek an interim order against the 5th Respondent taking any decision against the 3rd Respondent under section 68 of the statute P1, order preventing the 5th Respondent from invoking any provision of the Statute P1, order suspending the decision of the 5th Respondent to appoint the Board of Management to the 3rd Respondent Society reflected in document P16, order suspending the appointments of 7th 8th and 9th Respondents to the Board of Management of the 3rd Respondent Society, order preventing the 5th Respondent interfering with the Petitioners carrying on duties and responsibilities as Board of Directors of the 3rd Respondent Society.

As I mentioned above in the instant application local branches elections were held on 2nd January 2021 and the first meeting of the General

Committee was held and Board of Directors were elected on 24th October 2021. In the circumstances, if the relevant parties have acted in accordance with the Statute and the Constitution of the Society, the tenure of the Board of Directors would have come to an end by three months from the 24th of October 2021, even if the 5th Respondent did not dissolve the Board of Directors by her letter marked P16 dated 19th May 2025. Hence, the Petitioners cannot claim any legitimate expectation to exceed what they are entitled to.

At the time the Board of Directors was elected, they would have known/presumed that their tenure would come to an end as specified in the Statute and the Constitution. Those who come to such positions knowing their departure must be ready to leave once the time comes. Accordingly, no prejudice or irreparable damage would be caused to the Petitioners as a result of not issuing any interim relief as prayed for.

Further, it is observed that as per Section 68(1)(c) of the Statute P1, it is the duty of the Board of Management appointed by the 5th Respondent to summon a general meeting of the Society and elect an executive committee within a period of six months. Moreover, the Board of Management enjoys the power, privileges and right of an executive committee duly appointed by the Society during such period. Hence, in the reasons given above, no prejudice or damage would be caused to the functions of the Society; in fact, if in case this Court were to issue the interim relief sought by the Petitioner, it would undoubtedly cause damage to the society. Therefore, I am of the view that the Petitioners have failed to satisfy the balance of convenience in their favour.

Accordingly, the application for interim relief is refused.

Judge of the Court of Appeal

Adhithya Patabendige, J.

I agree.

Judge of the Court of Appeal