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

In the matter of an application for revision in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (PHC) APN No: 135/2020

High Court of Nuwara Eliya
Writ Application No. 8/2020

Anagipura Ashoka Sepala,
No. 58, Dewsiripura,
Talawakelle.

PETITIONER

Vs

1. Hon. Lalith U. Gamage,
   Governor of the Central Province,
   P.O.Box No. 6, Maligawa Square, Kandy.

2. Lechchuman Bharathidasan,
   Vice Chairman,
   Talawakelle – Lindula Urban Council,
   Talawakelle.

3. Talawakelle – Lindula Urban Council,
   Talawakelle.

RESPONDENTS

AND NOW BETWEEN

Anagipura Ashoka Sepala,
No. 58, Dewsiripura,
Talawakelle.

PETITIONER – PETITIONER

- **Vs –**

-

1. Hon. Lalith U. Gamage,
   Governor of the Central Province,
   P.O.Box No. 6, Maligawa Square,
   Kandy.

2. Lechchuman Bharathidasan,
   Vice Chairman,
   Talawakelle – Lindula Urban Council,
   Talawakelle.

3. Talawakelle – Lindula Urban Council,
   Talawakelle.

RESPONDENTS - RESPONDENTS

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

Counsel: Faisz Musthapha, P.C., with Ms. Faiszar Musthapha Markar and Ranga Dayananda for the Petitioner

Ms. Farzana Jameel, P.C., Additional Solicitor General with Manohara Jayasinghe, Senior State Counsel for the 1st Respondent

Malin Danansuriya for the 2nd Respondent

Supported on: 14th December 2020

Written submissions: Tendered on behalf of the Petitioner on 18th December 2020

Tendered on behalf of the 1st Respondent on 17th December 2020

Decided on: 05th February 2021

Arjuna Obeyesekere, J., P/CA

The Petitioner states that he is a businessman by profession and that he entered active politics in 2002. The Petitioner had been elected as a member of the 3rd Respondent, the Talawakelle – Lindula Urban Council in 2002 and had been re-elected in 2011 and 2018. The Petitioner had been appointed as the Chairman of the 3rd Respondent in 2011, as well as in 2018.

The Petitioner claims that he has rendered yeoman service as Chairman of the 3rd Respondent, and that in the process earned the wrath and jealousy of other politicians in the Nuwara-Eliya District. The Petitioner states that by letter dated 12th December 2019, the 1st Respondent, the Governor of the Central Province had required the Petitioner to show cause in respect of 15 charges, which he did by his letter dated 19th December 2019, even though the Petitioner claims that the said charges were baseless and frivolous.

The Urban Councils Ordinance, as amended (**the Ordinance**) contains detailed provisions which empower the Minister entrusted with the subject of local government to *inter alia* remove a Chairman of an Urban Council.

In terms of Section 184(1) of the Ordinance:

> *"If at any time the Minister is satisfied that there is sufficient proof of-*
>
> *(a) persistent refusal to hold or attend meetings or to vote or to transact business at any meetings that may be held; or*
>
> *(b) wilful neglect, or misconduct in the performance of the duties imposed by this Ordinance; or*
>
> *(c) persistent disobedience to or disregard of the directions, instructions or recommendations of the Minister, or the Commissioner; or*
>
> *(d) incompetence and mismanagement; or*
>
> *(e) abuse of the powers conferred by this Ordinance,*

on the part of the Chairman or on the part of any Urban Council or any of the members thereof, the Minister may, as the circumstances of each case may require, by Order published in the Gazette -

(i) remove the Chairman from office; or

(ii) remove all or any of the members from office of the Council from office, and the provisions of section 12 (3) shall thereupon apply; or

(iii) dissolve the Council;

and such Order shall as soon as may be convenient be laid before Parliament."

The power of the Minister to act in terms of Section 184(1) is subject to the condition set out in Section 184(1A), which reads as follows:

"*The Minister shall before making an Order under subsection (1), appoint for the purpose of satisfying himself in regard to any of the matters referred to in subsection (1), a retired judicial officer to inquire into and report upon such matter within a period of three months, and such officer shall in relation to such inquiry have the powers of a Commission of Inquiry appointed under the Commissions of Inquiry Act*".

I must note at this stage that in terms of Section 184(1B)(a)(i) of the Ordinance,

"*When the Minister appoints a retired judicial officer under subsection (1A) to inquire into any matter, the Minister may* ***as the circumstances of each case may require*** *by Order published in the Gazette, suspend the Chairman from office and direct the Vice-Chairman or, where the office of Vice-Chairman is vacant, or where the Vice-Chairman has been suspended, the Assistant Commissioner of Local Government of the region to exercise the powers and perform the duties of the Chairman*."

Thus, it is noted that it is not mandatory that the Chairman be suspended pending the outcome of the inquiry, and that the decision whether to suspend the Chairman is at the discretion of the Minister.

Section 2(1)(a) of the Provincial Councils (Consequential Provisions) Act No. 12 of 1989 (**the Act**) provides as follows:

> "*Where any power or function is conferred on or assigned to a Minister or to a public officer, as the case may be, by any written law made prior to November 14, 1987 on any matter set out in List I of the Ninth Schedule, such power or function may,*
>
> *(a) if such power or function is conferred on, or assigned to, a Minister, be exercised or discharged, in relation to a Province and unless the context otherwise requires, by the Governor of that Province or the Minister of the Board of Ministers of that Province to whom the subject has been assigned; and accordingly, references in every such written law to a Minister shall be deemed to include references to a Governor of a Province or the Minister of the Board of Ministers of such Province to whom the function has been assigned*;...."

Thus, in terms of Section 2(1)(a) of the Act, the powers vested in the Minister in terms of Section 184(1), (1A) and (1B) can be exercised by the Governor.

Accordingly, the 1st Respondent, the Governor of the Central Province acting in terms of the powers vested in him by Section 184(1A), read together with Section 2 of the Act, had by a notice published in the Extraordinary Gazette No. 2163/9 dated 17th February 2020, marked '**P8A**', appointed a retired Judge of the High Court to inquire and report within three months, whether the Petitioner has committed any misdeeds described in Section 184(1) of the Ordinance and Section 2(1) of the Supervision and Administration of Local Authorities Statute No. 7 of 1990. The aforementioned Order did not provide for the suspension of the Petitioner, a matter which I shall advert to, later. It is an admitted fact that an inquiry did not follow, as a result of the pandemic that followed soon thereafter. In any event, the Petitioner had no complaint with the appointment of an Inquiry Officer in terms of '**P8A**'.

By a notice published in Extraordinary Gazette No. 2199/9 dated 27th October 2020, marked '**P9**', the 1st Respondent, once again acting in terms of the powers vested in him by Section 184(1A) of the Ordinance, read together with Section 2 of the Act had appointed the same retired High Court Judge appointed in February 2020, to inquire and report within three months, whether the Petitioner has committed any misdeeds described in Section 184(1) of the Ordinance.

In addition to the appointment of an Inquiry Officer, the 1st Respondent had made an order under Section 184(1B)(a)(i) of the Ordinance suspending the Petitioner from holding the office of Chairman of the 3rd Respondent, and appointing the 2nd Respondent to act as Chairman in the interim period.

Aggrieved by the decision to suspend him from the office of Chairman, the Petitioner filed Writ Application No. 8/2020 in the Provincial High Court of the Central Province holden at Nuwara – Eliya on 3rd November 2020, seeking, *inter* alia the following relief:

> *"(b) Issue and grant a Writ of Certiorari quashing the purported order of the 1st Respondent ordering the 2nd Respondent to discharge the duties and perform the functions of the Office of the Chairman of the 3rd Respondent Council as contained in the Government Gazette bearing No. 2199/9 dated 27th October 2020, marked 'P9' until the final determination of this application;*
>
> *(c) Grant interim relief staying the purported order of the 1st Respondent suspending the Petitioner from holding the post of Chairman of the 3rd Respondent Council as contained in the Government Gazette bearing No. 2199/9 dated 27th October 2020, marked 'P9' until the final determination of this application; ..."*

I must note that even though the Petitioner had sought the above interim relief, the Petitioner had not sought a Writ of Certiorari to quash the decision of the 1st

Respondent to suspend him from Office. The Petitioner has in fact admitted to this Court that, '*it was common ground that prayer (b) contained the final relief.*'[1]

The Hon. High Court Judge, having heard the learned Counsel for the Petitioner on 5th November 2020 had issued notices on the Respondents and fixed the matter for consideration of the interim relief for 19th November 2020. Having heard Counsel for all parties thereafter, the Hon. High Court Judge, by her Order delivered on 27th November 2020 had refused to grant the interim relief.

Aggrieved by the said Order, the Petitioner has invoked the revisionary jurisdiction of this Court, seeking *inter alia* the following relief:

a) To act in revision and set aside the Order of the learned High Court Judge, in so far as it relates to the suspension of the Petitioner from performing the functions of the Chairman of the 3rd Respondent Council and the appointment of the 2nd Respondent;

b) To act in revision and set aside the said orders as set out in paragraph (a) above contained in the Gazette bearing No. 2199/9 dated 27th October 2020, marked '**P9**';

c) To make order granting the interim orders prayed for in paragraphs (c) – (e) of the petition to the High Court, namely to stay the order of suspension of the Petitioner from holding the office of Chairman of the 3rd Respondent, and the appointment of the 2nd Respondent as acting Chairman of the 3rd Respondent.

The learned President's Counsel for the Petitioner submitted that he is not challenging the order contained in '**P9**' relating to the appointment of a retired High Court Judge to inquire whether the Petitioner has committed any misdeeds, and that his challenge is limited to the order of suspension of the Petitioner.

Prior to considering the arguments presented to this Court by the learned President's Counsel for the Petitioner, it would be important to identify the scope of this application. This is not an application filed in this Court in terms of Article 140 of the

[1] Vide page 3 of the synopsis filed by the Petitioner on 17th December 2020; see also the Written Submissions of the Petitioner before the Provincial High Court.

Constitution challenging the decision of the 1st Respondent, but is an application seeking to revise an order refusing the granting of interim relief staying the order of suspension.

It has been consistently held by this Court that its revisionary power is discretionary and that its exercise cannot be demanded as of right unlike the statutory remedy of appeal.[2] In **Don Chandra Maximan Elangakoon vs Officer-In-Charge, Police Station, Eppawala**[3] this Court set out the following as being some of the matters that need to be considered when called upon to exercise its discretion:

(a) The aggrieved party should have no other remedy

(b) If there was another remedy available to the aggrieved party then revision would be available if special circumstances could be shown to warrant it.

(c) The aggrieved party must come to Court with clean hands and should not have contributed to the current situation.

(d) The aggrieved party should have complied with the law at that time.

(e) The acts complained of should have prejudiced the substantial rights of the aggrieved party.

(f) The acts or circumstances complained of should have occasioned a failure of Justice.

(g) The aggrieved party should plead or establish exceptional circumstances warranting the exercise of revisionary powers.

(h) The aggrieved party should demonstrate the error or illegality on the face of the record, which would occasion a failure of Justice.

It is settled law that a petitioner in a revision application must satisfy Court that there exists "exceptional circumstances" that warrant this Court from exercising its revisionary jurisdiction. This position has been clearly set out in the following

[2] See Don Chandra Maximan Elangakoon vs Officer in Charge, Police Station, Eppawela [2007] 1 Sri LR 398.
[3] Ibid

passage by Amaratunga, J **Dharmaratne and Another vs Palm Paradise Cabanas Limited and Others**:[4]

> "*Thus the existence of exceptional circumstances is the process by which the Court selects the cases in respect of which this extraordinary method of rectification should be adopted. If such a selection process is not there revisionary jurisdiction of this Court will become a gateway for every litigant to make a second appeal in the garb of a revision application or to make an appeal in situations where the legislature has not given right of appeal.*
>
> *The practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed*."

Wimalachandra J. in **Bank of Ceylon v. Kaleel and Others**[5] stated that:

> "*In any event, for this Court to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it. In other words, the order complained of is of such a nature which would have shocked the conscience of Court*."

It is in this background that the learned Additional Solicitor General for the 1st Respondent has submitted that the legality of the Order of suspension must be determined by the High Court and that this Court will only consider whether the refusal to grant interim relief is unjustified, is manifestly illegal, shocks the conscience of the Court and/or amounts to a travesty of justice. While I agree that it is not for this Court to decide the legality of the 1st Respondent's impugned decision to suspend the Petitioner, I am of the view that this Court must consider the arguments of the Petitioner relating to the legality of the decision of the 1st Respondent in the context of the principles applicable to the granting of interim relief and then decide if the Order of the Hon, High Court Judge is manifestly illegal or shocks the conscience of this Court.

[4] [2003] 3 Sri LR 24 at page 30.
[5] [2004] 1 Sri LR 284 at page 287.

I shall now consider the Order of the Hon. High Court Judge in the light of the several arguments presented to this Court by the learned President's Counsel for the Petitioner.

The first argument of the learned President's Counsel was that, even though the 1st Respondent has the power to act in terms of Section 184(1A) of the Ordinance and appoint a retired Judicial Officer to inquire into whether a member has committed any misdeeds as well as suspend the Chairman of an Urban Council, he must do so on the advise of the Board of Ministers of the Central Provincial Council. This argument is based on the provisions of Article 154F(1) of the Constitution, which reads as follows:

> '*There shall be a Board of Ministers with the Chief Minister at the head and not more than four other Ministers to aid and advise the Governor of a Province in the exercise of his functions. The Governor shall, in the exercise of his functions, act in accordance with such advice, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion*.'

It is common ground that the Central Provincial Council stood dissolved as at the date of making the impugned Order. The learned President's Counsel therefore submitted that in the absence of the Board of Ministers, the 1st Respondent could not have suspended the Petitioner. I have considered the oral submissions as well as the written submissions placed on behalf of the Petitioner before the Hon. High Court Judge and observe that this argument has not been presented to the Hon. High Court Judge. The principal argument presented to the Hon. High Court Judge was that the 1st Respondent does not have the power to make the impugned order since the Supervision and Administration of Local Authorities Statute No. 7 of 1990 of the Central Province does not empower the Governor to do so. The Hon. High Court Judge has overruled this argument. In the course of doing so, she has considered the provisions of Article 154C, and stated that in any event, in the absence of the Board of Ministers, the Governor, in terms of the wide powers conferred on him by the Constitution, can act against a local government body.[6] There has however not been a consideration of Article 154F by the Hon. High Court Judge for the reason that an argument relating to Article 154F was not presented to her.

[6] Vide page 9 of the Order of the High Court.

Be that as it may, I shall now consider the first argument of the learned President's Counsel for the Petitioner. Although Article 154F(1) requires the Governor, in the exercise of his functions, to act in accordance with the advice of the Board of Ministers, the said Article is silent as to the consequences of non-compliance. Furthermore, if the argument of the Petitioner is accepted, then, even where an Urban Council or its Chairman or a member runs amok and openly contravenes the provisions of Section 184(1), in the absence of the Board of Ministers, the Governor would be *functus*. This simply cannot be. If I am to paraphrase Justice Robert Jackson's famous dissent in **Terminiello v. City of Chicago**[7], if such doctrinaire logic is not tempered with a little practical wisdom it will convert the Constitution into a suicide pact. I must also observe that Article 154F(3) provides that, "*The question whether any, and if so what, advice was tendered by the Ministers to the Governor shall not be, inquired into in any Court*." Thus, it appears that the jurisdiction of this Court to consider whether the 1st Respondent acted on the advice of the Board of Ministers has been ousted by Article 154F(3). All these however are matters that must be considered by the Hon. High Court Judge at a full hearing and a suitable decision arrived at.

The second argument of the learned President's Counsel for the Petitioner is twofold. The first aspect of this argument is that the order of suspension at '**P9**' (the second Order) has been issued while '**P8A**' (the first Order) was in operation, and is therefore bad in law. Flowing from this was the second aspect of the argument that an Order of suspension must be made simultaneously with the appointment of the Inquiry Officer, and that while the Inquiry Officer was appointed by the first Order, the Order of suspension came eight months thereafter, by the second Order.

The first Order has been published on 17th February 2020 and is therefore valid until 17th May 2020. That is the period that is provided for by law. Although I am of the view that this period can be extended by the Minister, no such extension of the first Order was in fact made by the 1st Respondent. The first Order therefore lapsed on 17th May 2020. The second Order made on 27th October 2020 is a fresh Order and is not an extension of the first Order. I am therefore in agreement with the view

[7] 337 U.S. 1 (1949).

expressed by the Hon. High Court Judge in this regard.[8] I therefore cannot agree with the first aspect of the second argument of the learned President's Counsel for the Petitioner that the second Order has been issued while the first Order was in operation. The necessity to consider the second aspect of the argument therefore does not arise, as the decision to appoint an Inquiry Officer and to suspend the Petitioner has been made on the same day by the second Order '**P9**'. However, for the purpose of completeness, I wish to consider the legal position in this regard.

The learned President's Counsel for the Petitioner drew my attention to the judgment of this Court in **Mendis vs Berty Premalal Dissanayake and Others**[9] in support of his argument that the appointment of an Inquiry Officer and the Order of suspension must be made at the same time, and that where an Order of Suspension is not made at the outset, the Minister cannot make an order of suspension subsequently. In that case, the Inquiry Officer was appointed to inquire into the charges against the petitioner on 30th April 2004, and the inquiry commenced on 22nd July 2004. By an order dated 06th August 2004, the Minister suspended the Petitioner's membership and Chairmanship of the Pradeshiya Sabha of Thalawa. Having considered the provisions of Section 185(3) of the Pradeshiya Sabha Act, this Court held as follows:

> *"Section 185 (3) specifically provides that when the Minister appoints a retired judicial officer under subsection (2) to inquire into any matter, the Minister may, as the circumstances of each case may require by order published in the Gazette suspend the Chairman from office.*
>
> *By this provision* ***the Minister has discretion to suspend the Chairman depending on the circumstances of each case****. Suspension may involve hardship and may cast a slur on the good name and reputation of a duly elected member of a local authority;* ***as such the discretion must be exercised reasonably and with circumspection****. But this subsection has clearly laid down the point in time the Minister could exercise his discretion- i.e. at the time of appointing a retired judicial officer under subsection (2). The specification of this time has a purpose; that the Minister appoints a retired judicial officer to satisfy himself with regard*

[8] Page 10 of the Order of the High Court.
[9] [2006] 2 Sri LR 402.

to any of the matters referred to in subsection(1)(a) to (e), these matters are of serious nature. The suspension is due to an exceptional situation which plainly call for swift and immediate action; action directed to prevent a break down in the administration of the Sabha; that the circumstances call for the suspension of the Chairman from office in order to control the mal-administration. In other words, what is envisaged is a state of affairs which call for prompt action in order to arrest a rapidly deteriorating situation, lest there be a breakdown in the administration of the Sabha. Therefore the Minister is given a discretion to suspend the Chairman at the time of the appointment of the retired judicial officer to inquire into the matters in issue. At the time of this appointment the Minister was aware of the allegations and the charges against the Chairman and the Minister was in a position to decide whether those allegations and charges are so serious that warrants the suspension of the Chairman. But the Minister has not taken any steps with regard to suspension at the time of appointing a retired judicial officer to inquire into the allegations and the charges against the Chairman and allowed the Chairman to function even after the appointment of a retired judicial officer, that shows that the minister was of the opinion there is no imminent danger or breakdown (of) the administration of the Sabha and prompt action was not necessary. If the Minister had not formed an opinion at the time of appointing a retired judicial officer that the suspension of the Chairman was necessary, he cannot on a subsequent time, in this case after three months, form such an opinion ***without any new material*** *that warrants another inquiry. The Respondents have not taken up the position that they had new material to suspend the Chairman on a subsequent day. For the aforesaid reasons the Ministers decision to suspend the Chairman without additional material on a date subsequent to the appointment of the retired officer the "One Man Commission" is illegal and unreasonable."* (emphasis added)

The above is a simple reiteration that discretion must be exercised reasonably. However, I am not inclined to agree that the above judgment supports the proposition that an Order of suspension must be made simultaneously with the appointment of an Inquiry Officer, and where that is not done, an order for suspension cannot be made subsequently. All that **Mendis** stands for is that if the appointment of the Inquiry Officer and the suspension is not made at the same time,

any subsequent suspension, although possible, must be done on the basis of new material. Having considered the provisions of Section 184(1B)(a)(i) of the Ordinance, and in particular the words, '*as the circumstances of each case may require*', I take the view that the power of the 1st Respondent to suspend the Chairman need not be exercised at the same time that the 1st Respondent appoints an Inquiry Officer in terms of Section 184(1A). To impose such a requirement would be to force the 1st Respondent to suspend a Chairman of an Urban Council the moment he appoints an Inquiry Officer, even though the *circumstances may not require* such a course of action. Having said so, I must state that whether the appointment of the Inquiry Officer and the suspension takes place simultaneously or not, the reasonableness of such decision and the necessity to suspend can be the subject of judicial review.

The third argument of the learned President's Counsel, which is connected to the latter aspect of the second argument, was that when the 1st Respondent appointed the Inquiry Officer in February 2020 by the first Order, he did not suspend the Petitioner, and that *there was no material to warrant any departure from '**P8A**' and suspend the Petitioner*. He submitted further that although the Petitioner was not suspended from holding the office of Chairman by the first Order, the Petitioner has been suspended from holding the office of Chairman in terms of the second Order, and that no reasons have been adduced for the departure from the position in '**P8**'.

In his limited affidavit tendered to this Court, the 1st Respondent has explained that General Elections were expected to be held in April, and that, '*being mindful of the uncertainty that could ensue, I refrained from taking steps to suspend the Petitioner as Chairman **even though his conduct warranted suspension.***' The 1st Respondent goes onto state that, '*after considering all relevant matters, I arrived at the view that if the Petitioner remained in office as Chairman of the Urban Council during pendency of the inquiry, there is a possibility that it would undermine the independence of the same and would also disrupt the efficient functioning of the Urban Council*'. This position has not been contradicted by the Petitioner before this Court.

It is important to note that the 1st Respondent did not have the opportunity of filing an affidavit before the High Court. In these circumstances, I am of the view that the reasonableness of the decision to suspend the Petitioner from the office of Chairman must be decided by the High Court after the 1st Respondent is afforded an

opportunity of explaining the circumstances that led to the suspension of the Petitioner, and the Petitioner is afforded an opportunity of countering the same.

The next argument of the learned President's Counsel for the Petitioner was that the 1st Respondent has acted in bad faith in suspending the Petitioner. The Petitioner has alleged that the brother of a rival candidate is the Secretary of the 1st Respondent and that the 1st Respondent is acting at the instigation of the said rival candidate. In his affidavit to this Court, the 1st Respondent has taken up the position that the complaint against the Petitioner was lodged while his predecessor was in office, and that the preliminary inquiry was initiated by the Provincial Commissioner,[10] prior to the 1st Respondent assuming office in the post of Governor. I must observe that the show cause letter too had been issued by the predecessor of the 1st Respondent.[11] I must also state that the 1st Respondent did not suspend the Petitioner by the first order '**P8A**', but did so only in the second Order '**P9**', for the reasons that I have already adverted to. In these circumstances, I am not inclined to agree with the said argument. However, I must state that this too is a matter that must be decided by the Hon. High Court Judge after affording the 1st Respondent an opportunity of answering the said allegation.

The final argument of the learned President's Counsel for the Petitioner is twofold. The first was that having issued notice in the first instance, the Hon. High Court Judge should have issued the interim relief. The second was that the Hon. High Court Judge has misdirected herself on the principles applicable to the grant of interim relief.

I must state that where interim relief has been prayed for, it is prudent for a Judge to consider the issue of notice and interim relief together, in an *inter-partes* hearing. However, this may not be possible in all matters. The fact that a Court issues only notice in the first instance does not mean that the Court must grant interim relief at a subsequent stage. Nor does the issuance of an *ex-parte* interim order mean that Court cannot vacate that interim relief after hearing the respondent. As set out by Chief Justice Neville Samarakoon in **Billimoria v. Minister of Lands and Land Development & Mahaweli Development and two others**,[12] *"Interim orders by their*

[10] Vide letter dated 19th August 2019 marked 'R3'.
[11] Vide letter dated 19th November 2019 marked 'R4'.
[12] 1978-79-80 (1) Sri LR (SC) 10 at page 15.

very nature must depend a great deal on a Judge's opinion as to the necessity for interim action." While this would extend to the issuance of notice in the first instance, I am of the view that artificial fetters should not be placed in the path of a Judge that would prevent him from considering the respondent's view at a later stage of the proceedings.

This position has been clearly explained by Justice P. Padman Surasena in the following manner in **F Hoffmann La-Roche Ltd and another vs National Medicines Regulatory Authority and others**:[13]

> "*If the argument of the Learned Counsel for the petitioners that court should extend the operation of the interim relief it had granted, on the basis that the petitioners have made out a 'Prima facie sustainable case', is to be accepted, this court will have to issue interim reliefs every time it decides to issue notices on the respondents. This is because court decides to issue notices on the respondents since it is satisfied that there is a prima facie case to be looked into*".

I therefore cannot agree with the first aspect of the final argument advanced on behalf of the Petitioner.

In **Duwearachchi and another vs Vincent Perera and Others**[14] this Court set out the following as being the three matters that must be examined when considering an application for interim order:

a) Will the final order be rendered nugatory if the petitioner is successful?

b) Where does the balance of convenience lie?

c) Will irreparable and irremediable mischief or injury be caused to either party?

The decision in **Duwearachchi** has been consistently followed by this Court in several cases including in **Ceylon Tobacco Company PLC vs Hon. Maithripala Sirisena,**

[13] CA (Writ) Application No. 98/2016; CA Minutes of 22nd June 2016.
[14] 1984 (2) Sri LR 94.

Minister of Health and others[15], **Tokyo Super Cement Company Lanka (Private) Limited vs Sri Lanka Ports Authority and others**,[16] **NatWealth Securities Lanka (Private) Limited vs The Monetary Board of the Central Bank and others**[17], **F Hoffmann La-Roche Ltd and another vs National Medicines Regulatory Authority and others**[18] and **Wadugodage Wijeratne vs Faiszer Mustapha, Minister of Provincial Councils and Local Government and another.**[19]

It is clear that the above three matters would have to be considered only if Court decides that a prima facie case has been made out.

The final relief that has been sought before the Provincial High Court is a Writ of Certiorari to quash the decision to appoint the 2nd Respondent as the acting Chairman of the 3rd Respondent Urban Council. That order would not be rendered nugatory by the refusal to issue the interim relief preventing the 2nd Respondent from acting in the office of Chairman or by not issuing an interim order staying the suspension of the Petitioner from the office of Chairman.

In support of the argument that the balance of convenience is in favour of the Petitioner, it was submitted that out of his period of office as Chairman, the Petitioner only has fifteen months left and that every day of his suspension means that he has less time to function as Chairman. This is no doubt true and the decision to suspend the Petitioner must therefore not only be reasonable but should be arrived at carefully. Furthermore, such a decision may involve hardship and cast a slur on the good name of the Petitioner. As held in **Yatawara vs Sarath Ekanayake and Others**,[20] local government bodies "*play an extremely important role in the day to day affairs of the people and to deprive the people of their duly elected Chairman without any legal basis affects the smooth administration of the pradeshiya sabha and the quality of the services provided to the people*. *While it is absolutely important that prompt and effective action is taken against any mismanagement or abuse of power by a Chairman or member of a local authority, it is equally important that the*

[15] CA (Writ) Application No. 336/2012; CA Minutes of 22nd February 2013.
[16] CA (Writ) Application No. 258/2013; CA Minutes of 30th August 2013.
[17] CA (Writ) Application No. 335/2015; CA Minutes of 29th March 2016.
[18] Supra.
[19] CA (Writ Application) No. 373/2017; CA Minutes of 22nd November 2017.
[20] CA (Writ) Application No. 691/2009; CA Minutes of 1st February 2019.

checks and balances that have been laid down by the legislature should be strictly adhered to."

A consideration of the facts of this application however show that the 1st Respondent did not rush and suspend the Petitioner but only did so, when he made the second Order, and that too for reasons which he has explained, namely that '*if the Petitioner remained in office as Chairman of the Urban Council during the pendency of the inquiry, there is a possibility that it would undermine the independence of the same and would also disrupt the efficient functioning of the Urban Council.*' This position cannot be rejected especially when I consider the charges levelled against the Petitioner and the fact that the witnesses against the Petitioner would be officers of the 3rd Respondent. After all, "*the objective that is sought to be achieved by an inquiry being conducted is to ensure good governance and financial discipline by the elected representatives of the people and prevent abuse of power and mismanagement*".[21] It is important that there is no interference with this process. The Hon. High Court Judge has accepted this position, and I see no basis to interfere with the said finding.

I have examined the order of the Hon. High Court Judge and find that the matters addressed by the Petitioner as warranting the issuance of an interim order have been considered by the Hon. High Court Judge. The attention of this Court has not been drawn to any finding of the Hon. High Court Judge which is so illegal or so shocking that the Order cannot be permitted to stand and must be revised, nor has the Petitioner placed any exceptional circumstances that warrant this Court interfering with the Order of the Hon. High Court Judge.

There is one matter that I wish to advert to, before I conclude. In response to a question by this Court, the learned Additional Solicitor General has filed a letter issued by the Secretary to the Inquiry Officer confirming that the Inquiry Report would be submitted by 26th January 2021. Thus, it appears that the necessity to extend the period of '**P9**' will not arise. However, in the event an extension of time is sought by the Inquiry Officer, the 1st Respondent must ascertain the necessity for such an extension and why the inquiry could not be concluded within 3 months, and

[21] Vide Yatawara vs Sarath Ekanayake and Others; supra.

thereafter consider whether the suspension of the Petitioner must continue, prior to arriving at a decision.

In the above circumstances, I see no legal basis to issue notice of this application on the Respondents. This application is accordingly dismissed, without costs.

President of the Court of Appeal

Sobhitha Rajakaruna, J

I agree

Judge of the Court of Appeal