

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

In the matter of an application for Writ of
Certiorari and Prohibition under and in
terms of the Article 140 of the
constitution of the Democratic Socialist
Republic of Sri Lanka.

Tennakoon Mudiyanseelage Ruwan
Bandara Tennakoon
No. 24, Thekka Watta Road,
Tennekumbura,
Kandy.

Petitioner

CA (Writ) Application No: 753/24

Vs.

1. H. A. Asha Hapuarachchi
Commissioner of Co-operative
Development and Registrar of Co-
operative Societies,
Department of Co-operative
Development,
No. 330, Union Place,
Colombo 02.
2. Sri Lanka Consumer Co-operative
Societies Federation Limited (COOPFED),
No. 11, Saunders Place,

Colombo 12.

3. Secretary
Sri Lanka Consumer Co-operative
Societies Federation Limited (COOPFED),
No. 11, Saunders Place,
Colombo 12.
4. J. H. M. Shiromani Bandara
District Officer Society,
Department of Co-operative
Development,
No. 330, Union Place,
Colombo 02.
5. H. K. T. Sooriyathilakae
Co-operative Promotions Investigation
and Assistant,
Department of Co-operative
Development,
No. 330, Union Place,
Colombo 02.
6. W. M. M. S. Fernando
Co-operative Development Officer,
Department of Co-operative
Development,
No. 330, Union Place,
Colombo 02.
7. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Homilaa Anjaneer with J.M. Wijebandara
instructed by Ama Sahani Jayaweera for
the Petitioner.
Sachitha Fernando, S.C. for the
Respondents.

Argued on : 2025.11.26

Written Submissions : Petitioner : 2026.01.20
tendered on

Decided on : 2026.03.31

Dhammika Ganepola, J.

The Petitioner under the instant application is the Chairman of the 2nd Respondent, Sri Lanka Consumer Co-operative Society Federation Limited, elected at the Annual General Meeting (AGM) held on 21.10.2023 in terms of the Cooperative Society Law, No.5 of 1972, read with the By Laws of the 2nd Respondent Society marked **P7**. The Petitioner and the other elected office bearers are entitled to hold their offices for three years from the date of the election. The Petitioner states that the AGM held on 21.10.2023 was conducted according to law under the supervision of the representatives of the 1st Respondent and four other members who had been constituted as the Election Committee without any objection whatsoever by any quarters who attended the same. However, the 1st Respondent had informed the 3rd Respondent, the Secretary of the 1st Respondent Society, by her letter dated 26.10.2023 marked **P10**, that she had not been informed of the final decision in respect of the appointment of the office bearers. Therefore, the 1st Respondent had extended the term of the previous Board until the

decision on the appointment of the new Board of Directors was made available to the 3rd Respondent.

Subsequently, the 1st Respondent had issued the letter dated 22.01.2024 marked **P11**, addressed to the 3rd Respondent, stating that Regulation 5.3. X11 of the By-Laws creates an unfavourable situation for certain members. Accordingly, the 1st Respondent decided that, in terms of Section 60(2) of the Cooperative Society Law, the election of the office bearers had not been duly conducted. Therefore, the 3rd Respondent had been notified to reconduct the election on or before 01.03.2024, disregarding the above Regulation 5.3. X11. The Petitioner claims that the above Section 60(2) does not empower the 1st Respondent to inquire into a non-referred dispute and disregard the express disqualification set out in the By-Laws.

However, the 1st Respondent had continuously directed both the Petitioner and the General Manager of the 2nd Respondent Society to conduct a fresh election by her letters marked **P13, P16, P17, and P19**. Further, the 1st Respondent, by her letter dated 11.11.2024 marked **P20**, had appointed a three-member Board of control (comprising 4th, 5th, and 6th Respondents) to convene a General meeting in accordance with the laws and to duly elect a Board of Directors; and until such time, to ensure that the administrative and business affairs of the society are carried out properly. The Petitioner states that the directions given in the documents marked **P10, P11, P13, P16, P17, P19 and P20** are unlawful, illegal, unfair, arbitrary, capricious and therefore *ultra vires*.

Accordingly, the Petitioner *inter alia* seeks a mandate in the nature of:

- *Writs of Certiorari*:
 - to quash the decisions/directions of the 1st Respondent to hold a fresh election and to nullify the impugned election held on 21.10.2023;
 - to appoint a Board of Governors to the 2nd Respondent Society;
 - to disregard the By Law of the Society, those contained in P10, P11, P13, P16, P17, P19 and P20; and

- *Writ of Prohibition* preventing the 4th, 5th, and 6th Respondents from functioning as the Board of Control and summoning the General Meeting.

At the outset, it should be noted that the Respondent filed neither the Statement of Objections nor the Written Submissions. However, the learned State Counsel made legal submissions at the hearing. The Petitioner's main contention is that the 1st Respondent Commissioner/Registrar has no authority to make any direction to reconduct an election, disregarding Regulation 5.3.X11 of the By-Laws P7, under and in terms of Section 60(2) of the Cooperative Society Law as specified in the letter P11. Section 60(2) of the Cooperative Society Law empowers the Registrar of Co-operative Societies to decide any questions arising, as to, whether a general meeting of the society has been validly held or a member of a registered society has been duly elected to any office. Said Section 60(2) reads as follows:

“60(2) Where any question arises as to whether a member of a registered society has been duly elected to any office in the society or whether a member has ceased to be a member or officer of the society, or whether any general meeting of the society had been validly held, that question shall be decided by the Registrar whose decision shall be final.”

In the instant application, the 1st Respondent claims that she has exercised her authority under the above provision of law on the basis that Regulation 5.3.X11 of the By-Laws creates an unfavourable situation for some of the members. Regulation 5.3 of the By-Laws outlines the disqualifications for appointing members to the Board of Directors. The aforementioned Regulation specifies that *“During the last financial year, any representative representing a society which had not been engaged in transactions with the 2nd Respondent Co-operative Society for a value of more than 1 million rupees is not eligible to be elected as the office bearers of the 2nd Respondent Co-operative Society.”* The said Regulation is as follows.

“5.3.XII. අවසන් මුදල් වර්ෂය තුළ අවම වශයෙන් රුපියල් ලක්ෂ 10 කවත් ගනුදෙනු සංගමය සමඟ කර නැති සාමාජික සමිතියක නියෝජිතයෙකු වීම.”

The Board of Directors for the 2nd Respondent Society must be elected from qualified candidates, excluding those disqualified by the existing rules specified in the By-Laws P7. As per Regulation 5.1.2 of the By-Laws P7, the election of the Chairman of the 2nd Respondent Society is detailed in Schedule 1 thereof. The said Schedule 1 is as follows.

“අතුරු ව්‍යවස්ථාවේ 5.1.2. සහ 6.1.1. අනුව සංගමයේ ගරු සභාපතිවරයා පහත සඳහන් විධි විධාන අනුව තෝරා පත් කර ගත යුතුය.

විධිමත් ලෙස කැඳවන මහා සභා රැස්වීමකදී මහා සභා 5.3. අතුරු ව්‍යවස්ථාවේ සඳහන් නුසුදුසුකම් නොමැති නියෝජිතයෙකුට සභාපති ධුරය සඳහා ඉදිරිපත් විය හැක. ඉදිරිපත් විය හැක්කේ එක් අයකු පමණක් නම් හා වෙනත් නම් ඉදිරිපත් වී නැති නම් ඔහු සභාපති ධුරය සඳහා නිතරභයෙන් තේරී පත් වූ ලෙස සැලකිය යුතුය.

නම් එකකට වඩා ඉදිරිපත් වී ඇති අවස්ථාවක ඔවුන්ගේ නම් ප්‍රවරුචක සටහන් කර කුසපත් ඇදීමකින් අංක ලබා දී එක් එක් අපේක්ෂකයාගේ නම් ඉදිරියෙන් ඒ ඒ අපේක්ෂකයා කුසපත් ඇදීමෙන් ලබා ගත් අංක සටහන් කළ යුතු අතර, ඡන්දය ප්‍රකාශ කිරීම එම අංක අනුව සිදු කළ යුතුය. ඡන්ද විමසීම ඡන්ද පත්‍රිකා මඟින් කරන රහස් ඡන්ද විමසීමක් විය යුතුය.

ඡන්ද ප්‍රකාශ කිරීම අවසන් කිරීමෙන් පසු අපේක්ෂකයා හෝ ඔහු විසින් නම් කරන ලද ඔහුගේ නියෝජිතයෙකු ඉදිරියේ ප්‍රකාශිත ඡන්ද ගණන් කර වැඩිම ඡන්ද ගණනක් ලබා ගත් තැනැත්තා සභාපතිධුරය සඳහා තෝරා පත් කර ගත යුතුය. ඡන්ද ගණන සමාන වූ අවස්ථාවක කුසපත් ඇදීමකින් සභාපති ධුරයට කෙනෙකු තෝරා පත් කර ගත යුතුය.”

Thus, the election of the Board of Directors and the Chairman of the 2nd Respondent Society must adhere to the relevant Regulations specified in P7 therein. Any deviation from the above procedure is illegal unless the relevant by-laws are amended as per the specified procedure. There is no material placed before this Court to the extent that such an amendment was made at a General Meeting.

As per the Report marked P1 (page 9) of the General Meeting held on 21.10.23, the Chief Election Officer appointed by the Assistant Commissioner (legal audit) of the Department of Cooperative Development has also indicated to the General Assembly that it has to adhere to the approved By Laws of the 2nd Respondent Society. Accordingly, the Board of Directors and the Chairman of the 2nd Respondent were elected in accordance with the applicable provisions of the By-Laws marked P7. That was the material question for consideration under Section 60(2), namely, whether the election had been duly

conducted. Once the election was conducted in accordance with the approved By-Laws, the 1st Respondent could not lawfully disregard those By-Laws and require a fresh election on the footing that one of the By-Laws operated unfavourably upon certain members. Any such decision would be contrary to the By-Laws and outside the scope of Section 60(2).

Then the primary question arises as to whether Section 60(2) of the Cooperative Society Law gives any authority or power to the 1st Respondent to act, thus overriding Regulation 5.3.X11 in **P7**. Section 60(2) empowers the 1st Respondent to decide any question that arises as to whether a member of a registered society has been **duly elected** to any office of the society. The question to be determined by the 1st Respondent under Section 60(2) of the Cooperative Society Law was whether the election of the office bearers had been duly conducted in accordance with the applicable law and the By-Laws of the Society. In the instant application, there is no material to suggest that the election of the office bearers had not been duly conducted in accordance with the applicable Regulations. On the contrary, the position reflected in the material before Court is that the election was conducted in terms of the approved By-Laws. The matter considered by the 1st Respondent was not whether the election had been duly conducted, but whether the application of Regulation 5.3.X11 had created an unfavourable situation for certain members. Section 60(2) does not empower the 1st Respondent to determine whether a duly existing by-law is fair or unfair, favourable or unfavourable, to a particular group of members. Such a consideration is extraneous to the statutory inquiry under Section 60(2). Therefore, the decision taken by the 1st Respondent, as reflected in the letter P11, that the Board of Directors was not duly elected at the election held on 21.10.2023 and that a fresh election should be held disregarding Regulation 5.3.X11 in P7, was reached considering irrelevant aspects and by acting contrary to the applicable By-Laws. The said decision is therefore illegal and *ultra vires*. As such, the contents of the documents marked **P13, P16, P17, P19** and **P20** are also tainted with the same illegality.

Additionally, the 1st Respondent has observed that Regulation 5.3.X11 in P7 created an unfavourable situation for some members. In my view, it was not a matter relevant to the exercise of powers under Section 60(2). Once the statutory inquiry is confined to whether the election was duly conducted, the alleged favourable or unfavourable effect of an existing By-Law on a section of the membership does not arise for determination under that provision. Accordingly, it is unnecessary for this Court to examine whether Regulation 5.3.X11 was in fact favourable or unfavourable to any member or class of members.

As per the letter marked **P11**, the 1st Respondent had observed an unfavourable situation concerning some of the members upon perusal of the report of the election officer and the complaints made by the representatives of the member Societies. Although the Respondents filed neither a Statement of Objections nor the written submissions in the instant application, they have submitted several unmarked documents which they relied upon by way of the motion dated 03.02.2024. There do not appear to be any complaints from any representative in such documents.

Regulation 5.3 X11 of P7 requires any representative of a society to engage in transactions worth more than 1 million rupees with the 2nd Respondent Co-operative Society in the previous financial year to be eligible to stand as office bearers of the 2nd Respondent Co-operative Society. As per the document dated 25.11.2023, submitted by the Respondents, and sent by the Supervising Officer to the 1st Respondent, the alleged affected Societies failed to demonstrate their compliance with the requirement in Regulation 5.3 X11 of P7 during the 2022 financial year. Furthermore, the document dated 04.12.2023 had not been sent to the 1st Respondent by the Supervising Officer, thereby rendering it inappropriate to conclude that the Societies failed to purchase goods due to unavailability of goods. Additionally, there are no materials before this Court showing that the alleged Societies lodged complaints with the 1st and/or 2nd Respondents regarding any difficulties they have encountered before holding elections.

Although it was said that several Societies experienced difficulties during the last financial year, most of the Member Societies of the 2nd Respondent had complied with the requirement of Regulation 5.3 X11 of P7. Therefore, the potential direct impact on these Societies of not adhering to Regulation 5.3 X11 of P7 cannot be ignored. It appears that the 1st Respondent had not taken into account the aforementioned material facts and aspects when making her decision in letter P11. Consequently, the 1st Respondent took into account matters which were irrelevant to the determination required under Section 60(2), and the decision reached on that basis is illegal.

The jurisdiction of this Court under Article 140 of the Constitution unequivocally addresses all decisions that lead to definitive determinations of legal rights or obligations. The Writ of Certiorari serves as a powerful tool to review and overturn decisions made by public authorities that exceed their jurisdiction, violate the principles of natural justice, or the decisions that are tainted by illegality or procedural impropriety. In the above circumstances and the foregoing, I'm of the view that this is a fit and proper instance to exercise its Writ jurisdiction of this Court. Accordingly, this Court issues Writs of Certiorari and Writs of Prohibition as prayed for in the prayer of the Petition. No cost is ordered.

Application is allowed.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal