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* and *Prohibition* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Arachchikattuwa Multi-Purpose Co-operative Society Ltd.
Puttalam Road,
Arachchikattuwa.

Petitioner

CA/WRIT/803/2024

Vs.

1. Wasantha Gunasekara,
   Co-operative Development Commissioner/Registrar,
   Department of Co-Operative Development of the North-Western Province,
   1st Floor, Provincial Council Office Complex,
   Kurunegala.

2. J. A. I. Mangalika,
   Assistant Co-operative Development Commissioner,
   Co-operative Development Assistant Commissioner's Office,
   Chilaw.

3. Tissa Kumarasiri,
   Governor,
   North-Western Province,
   "Maligawa", Kurunegala.

4. K.A.K. Sumedha,
   Co-operative Development Officer,
   Co-operative Development Assistant Commissioner's Office,
   Chilaw.

Respondents

Before: Justice Mayadunne Corea

Justice Mahen Gopallawa

Counsel: Mr. Sapumal Bandara with Lakshitha Edirisinghe instructed by Praveen Premathilake for the Petitioner

Ms. Navodi de Zoysa, S.C. with Ms. Damayanthi Rajapaksha instructed by State Attorney for the Respondents.

Supported on: 17.02.2025

Decided on: 04.04.2025

Mahen Gopallawa J.

Introduction

The Petitioner is a Multi-Purpose Co-operative Society incorporated under the Co- operative Societies Law No. 5 of 1972 (as amended). In the instant application, the Petitioner has sought writs of certiorari to quash the documents P48 and P49. Document P48 is a letter dated 05.12.2024 issued by the 1st Respondent, who is the Co-operative Development Commissioner and Registrar of the North Western Province, appointing the 4th Respondent as an authorized officer to convene the Executive Committees of the Branch Societies of the Petitioner and to take steps to appoint their office-bearers and appoint their representatives to the General Assembly of the Petitioner. P49 is the notice published by the 4th Respondent convening a meeting of Branch Societies of the Petitioner for the aforementioned purposes. The Petitioners have also sought writs of Prohibition to prevent the 1st - 4th Respondents from "acting and/or continuously insisting the convening/holding of" the Executive Committees and the General Assembly of the Petitioner.

When the instant application was taken up for support, the 1st - 4th Respondents objected to the issuance of notice and interim relief prayed for in the petition.

Institutional Structure of the Petitioner and the Electoral Process

In order to place the submissions made by Counsel for the parties in their proper perspective, it would be useful to briefly examine the institutional structure of the Petitioner Society and the legal provisions relating to the conduct of elections to its representative bodies and the management of its affairs, in the first instance.

As per the petition, the conduct of affairs of the Petitioner are regulated by the By-Laws titled සීමා සහිත ආරච්චිකට්ටුව විවිධ සේවා සමූපකාර සමිතියේ අතුරු ව්‍යවස්ථාව dated 05.04.1971 marked

P2 (hereinafter referred to as "the By-Laws"). The petition further states that there are 23 Branch Societies affiliated to the Petitioner and that the management and administration of the functions are conducted by a Board of Directors. The names of the seven (7) directors constituting the current Board of Directors have been set out in the document marked P3.

With regard to the periodic election of members to Executive Committees of Branch Societies and the convening of the General Assembly of the Petitioner, the aforementioned By-Laws, *inter alia* provide as follows;

> *By-Law 23(අ) කොමසාරිස්තුමා විසින් පනවා රජයේ ගැසට් පත්‍රයේ ප්‍රකාශ කරනු ලබන නියෝග අනුව ප්‍රාදේශික කාරක සභා තෝරාපත් කල යුතු වන්නේය. සමිතියේ ලියාපදිංචි කළ දින සිට සමසක් ඇතුලත පළමුවැනි ප්‍රාදේශික කාරක සභාව තෝරා පත්කළයුතු වන්නේය.* ***ඉන්පසු ප්‍රාදේශික කාරක සභාවලට සාමාජිකයන් තෝරා පත්කිරීම වර්ෂ 3කට වරක් සමිතියේ මහා සභාවේ කාලය ඉකුත් වීමට යටත් පිරිසයින් සති 4කට වත් පෙර කල යුතු වන්නේය.***
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> *By-Law 33(1)* ***සමිතියේ මහ සභාවක් ඇති විය යුතු වන්නේය. එය අධ්‍යක්ෂක මණ්ඩලයේ සාමාජිකයන්ගේ සහ සමිතියේ නොයෙකුත් ප්‍රාදේශිකයන් නියෝජනය කරන නියෝජිතයන් ගෙන් සමන්විත විය යුතු වන්නේය.*** *එහෙත් ඡන්දය පාවිච්චි කිරීමට බලය ඇති වන්නේ නියෝජිතයන්ට පමණක්ය.*
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> *By-Law 33(2)* ***ප්‍රාදේශීක කාරක සභාවට නියෝජිතයින් තෝරා පත්කර ගැනීමෙන් පසු මාස තුනක් ඉකුත් වීමට පෙර මහ සභාවේ පළමුවැනි රැස්වීම පැවැත්විය යුතුය.***
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> *By-Law 33(3)* ***සෑම මහසභාවක්ම පළමුවරට රැස්වීම නියම කරන ලද දිනයේ පටන් තුන් අවුරුද්දකට නොවැඩි කාලයක් පවතින්නේය. එකී තුන් අවුරුදු කාලය ඉකුත්වී ගිය විටම මහ සභාව විසිර ගියා සේ සැලකෙන්නේය.***
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> *By-Law 55* ***තෝරාපත්කරගනු ලබන අධ්‍යක්ෂකවරුන්ගෙන් නිලකාලය ඊලඟ ප්‍රාදේශික කාරකසභා තෝරා පත් කර ගැනීමෙන් පසු සංස්ථාපනය වන මහසභාවේ පළමුවැනි රැස්වීමේදී අවසන් වන්නේය.*** *එසේ නිලය අවසාන වන අධ්‍යක්ෂවරයෙකු නැවත පත්කරගත හැකිය. එහෙත් එසේ කළහැක්කේ ඔහු ප්‍රාදේශිකයක නියෝජිතයෙක් නම් පමණක්ය.* (emphasis added).

It is evident from the above By-Laws that periodic elections should be held once in three (03) years to elect members to the Executive Committees of the Branch Societies (ප්‍රාදේශික කාරක සභා) and that the inaugural meeting of the General Assembly (මහා සභාව) should be held prior to the expiry of three months from the date of the aforementioned elections to Executive Committees. It is further provided that the General Assembly shall consist of the members of the Board of Directors and members nominated by Branch Societies. This has been admitted by the Petitioner vide paragraph 10 of the Petition. It is further evident from the By-Laws that the conduct of the elections to Executive Committees is essential and a *sine quo non* for the constitution of the General Assembly and that specific timelines have been prescribed for such purpose.

According to the petition, the conduct of elections to Executive Committees of Branch Societies of registered Co-operative Societies in the North-Western Province, which includes the Petitioner, is regulated by the Regulations titled Code of Co-operative Regulations for Electing Regional Committee Members of Multipurpose Co-operative Societies in North-Western Province (වයඹ පළාතේ විවිධ සේවා සමූපකාර සමිතිවල ප්‍රාදේශික කාරක සභිකයින් තෝරා පත්කර ගැනීමේ සමූපකාර නිලවරණ නියෝග මාලාව) issued by the 1st Respondent and published in the Gazette Extraordinary No. 1981/2 dated 22.08.2016, as amended by Gazette Extraordinary

No.2131/54 dated 12.07.2019. The said Regulations, which will be hereinafter referred to as "Code of Electoral Regulations (NWP)," have been annexed to the petition marked P5a and P5b.

The Conduct of Branch Society Elections

The election from which the grievance of the Petitioner purportedly arises is the election conducted on 17.01.2023 to elect members to Executive Committees of its Branch Societies. According to the Petition, the principal events relating to the conduct of this election could be summarized as follows (vide paragraphs 12-14);

(a) On the direction of the 2nd Respondent, the Notice dated 29.10.2022 to display the names of the eligible voters was published in Sinhala and Tamil newspapers;

(b) The date for the calling of nominations was scheduled for 05.01.2023, and the date of the election was scheduled for 17.01.2023, as directed by the 2nd Respondent in his letter dated 09.11.2022 marked P8;

(c) The Notice/Advertisement marked P7 containing, *inter alia* the date and time for the acceptance of nominations and objections (05.01.2023), the date of the poll (17.01.2023) and information on such matters had been published on 15.12.2022;

(d) The list of eligible voters of all 23 Branch Societies certified by the Board of Directors and the General Manager/Secretary of the Petitioner was forwarded to the 2nd Respondent by letter dated 29.12.2022 marked P9a, and approval for the same was granted by the 2nd Respondent by letter dated 30.12.2022 marked P9b;

(e) Information relating to the Chief Elections Officer and other participating officials had been given by the 2nd Respondent to the Petitioner by letters dated 14.12.2022 marked P10a, P10b and 30.12.2022 marked P11 respectively;

(f) Nominations were received on 05.01.2023;

(g) The election was conducted on 17.01.2023 under the supervision of the aforementioned officials appointed by the 2nd Respondent and election officers appointed by each Branch Society (P12); and

(h) At the conclusion of the election, results were informed and announced on 17.01.2023 and 207 members were elected to the Executive Committees.

Post-Election Developments

As per clause 33(2) of the By-Laws marked P2, it was incumbent upon the Petitioner to convene the General Assembly before the expiration of three (03) months from the date of the election of Executive Committees of the Branch Societies. However, it is common ground between the parties that the General Assembly was not convened by the Petitioner before the three-month period ended on 17.04.2023, and, in fact, it has not been convened to date.

According to the petition, the General Assembly was not convened due to the complaint (P14) made to the 1st Respondent and the subsequent Writ Application instituted in Provincial High Court of the North Western Province holden in Chilaw by one Vidana Arachchilage Sineth Iwanka, who was a member of the Petitioner, alleging that "serious frauds" had been committed in the compilation of the voters list used for the said election. The petitioner in the said writ application had, *inter alia* sought writs of *Certiorari* to quash the elections held on 17.01.2023 and the appointment of members elected in such elections as members of the Executive Committees of the respective Branch Societies and Prohibition preventing such elected members from functioning in office (vide prayer to the petition dated 08.03.2023). The Petitioner in the instant application was cited as the 1st respondent in the said writ application. The petitioner therein had also sought interim relief preventing the convening of meetings of the Executive Committees of Branch Societies and the General Assembly. However, after an *inter-partes* inquiry, interim relief had been refused by the learned High Court Judge by the order dated 06.04.2023 (P16).

The petition further discloses that a group of members of the Petitioner had compiled a report dated 04.07.2023 on the eligibility of certain members to vote and/or to hold office in its Branch Societies and submitted the same to the 1st Respondent, urging an immediate investigation. The Petitioner has annexed an extract to the petition purporting to summarize the "illegalities" referred to therein marked P18. The Petitioner also states that it commenced an internal inquiry and investigation into the matters disclosed in the aforementioned writ application in the Provincial High Court and complaints, and discovered that "serious frauds and/or illegalities" had been committed in the compilation of the lists of voters. The said "serious frauds and/or illegalities" have been detailed in paragraph 23 of the petition and include, *inter alia* inclusion of ineligible members and exclusion of eligible members in around 20 Branch Societies, inclusion of members with incomplete application forms, internal audit reports indicating ineligibility of certain members, inclusion of names of deceased members in the list of voters. When the instant application was supported, the learned Counsel for the Petitioner particularly drew the attention of Court to the documents marked P20a-P20t in support of his contention that ineligible members who had submitted incomplete membership forms or who had not paid their membership fees had been included in the lists of voters and casted their vote at the impugned elections. Some had even been elected. He also submitted that the former Chairman, who had been removed by the current Board of Directors, was responsible for the irregularities in the compilation of the lists of voters. The petition also refers to a complaint of forgery being lodged against the said former Chairman and Secretary by the current Chairman at the Chilaw Police Station and proceedings being instituted in respect of the same in the Chilaw Magistrate's Court.

Accordingly, the current Board of Directors, in the light of the "gamut of evidence establishing a serious fraud in relation to the concluded elections held on 17.01.2023", had resolved not to convene the General Assembly, and instead seek further legal advice and to request the 1st Respondent to launch a comprehensive investigation on the issue. The Minutes of the relevant Board Meetings dated 24.03.2023, 04.04.2023, 09.04.2023, 31.07.2023, 09.08.2023, 07.05.2024, and 17.07.2024 marked P26a - P26h have been annexed to the petition. Additionally, the Petitioner refers to irregularities being reported to the 1st and 2nd Respondent by several members of the Petitioner (vide paragraph 26 of the petition), and such irregularities being confirmed in an internal inquiry conducted by the 1st Respondent, although the findings have not been disclosed to the Petitioners.

Meanwhile, the 1st and 2nd Respondents had repeatedly directed the General Manager/ Secretary of the Petitioner to convene meetings of the Executive Committees of Branch Societies to appoint their office bearers and their representatives to the General Assembly of the Petitioner (P45a - P45h). The responses of the Petitioner to the said directions have marked as P46a-P46i. Thereafter, by the letter dated 05.12.2024 marked P48, the 1st Respondent proceeded to appoint the 4th Respondent as the authorized officer to convene such meetings in view of the Petitioner's refusal to do so. The 4th Respondent had thereafter issued the Notice marked P49 convening the Executive Committees of Branch Societies on 17.12.2024, to *inter alia* to nominate the members to be appointed to the General Assembly. It is at this juncture that the Petitioner has instituted the instant application.

Grounds for Judicial Review and Analysis

The Petitioner contends that the conduct of the 1st and 2nd Respondents in not addressing the aforementioned "serious frauds and/or illegalities relating to the elections held on 17.01.2023 and instead continuously directing the Petitioner to convene meetings of Executive Committees of Branch Societies and the General Assembly is *ultra vires*, arbitrary, and irrational and raise serious doubts about their *bona fides*.

In such circumstances, it is incumbent upon this Court to consider the legality, rationality and reasonableness of the conduct of the 1st and 2nd Respondents as well as the 4th Respondent. The position taken up by the learned Counsel for the Petitioner was that, although the 1st Respondent was vested with the statutory power to convene the meetings of the Executive Committees of Branch Societies and the General Assembly, such power should be exercised rationally and reasonably. However, since legality or *vires* of the powers of the 1st and 2nd Respondents have been put in issue in the petition, I intend to address such issue herein as well, for the sake of completeness.

Prior to delving into the attendant facts in the instant case, I wish to briefly refer to the parameters of the concepts of illegality and irrationality as grounds for judicial review, as succinctly presented in ***Udagedera Waththe Anusha Kumari v. Jayasinghe Mudiyanselage Chamila Indika Jayasinghe, Divisional Secretary, Uva Paranagama*** (per Obeyesekere J):[1]

> *In considering this question, it would be useful to bear in mind the description given by Lord Diplock* ***in Council of Civil Service Unions vs Minister for the Civil Service*** *to the phrases 'illegality' and irrationality:*[2]
>
> > *"By 'illegality' as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable."*

[1] CA (Writ) Application No. 293/2017, decided on 18.11.2019.

[2] [1985] AC 374.

> *"By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness.'[3] It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."*

In ***Regina v. Hull University Visitor, Ex parte Page*** *Lord Browne-Wilkinson, after considering the aforementioned passage of Lord Diplock, observed as follows:*[4]

> *"Over the last 40 years, the courts have developed general principles of judicial review. The fundamental principle [of judicial review] is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases, save possibly one, this intervention by way of prohibition or certiorari is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that* ***the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury sense reasonably****. If the decision-maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is Wednesbury unreasonable, he is acting ultra vires his powers and therefore unlawfully. (emphasis added)."*

I propose to examine and analyze the grounds for review presented by the Petitioner in the following order;

1. *Allegations of "serious frauds and/or illegalities" in the Compilation of the Lists of Voters*

As mentioned above, the Petitioner alleges that the reasons for not taking steps to convene the General Assembly was due to the unresolved "serious frauds and/or illegalities relating to the elections held on 17.01.2023", which emanate from the aforementioned irregularities in the compilation of the lists of voters of Branch Societies.

The principal evidence relied upon by the Petitioner appears to be the findings of the internal investigation detailed in paragraph 23 of the petition, in particular, the documents marked P20a-P20t. Upon an inquiry made by this Court, the learned Counsel for the Petitioner clarified that information contained in such documents had been prepared solely based on the contents of membership application forms of the persons concerned and that no other process of verification of such information had not been carried out or a hearing given to the members concerned. The Petitioner also seeks to rely upon the complaints made by individual members at various times to the 1st and 2nd Respondents. However, it is observed that the petition does not disclose that any independent verification was carried out by the Petitioner with regard to the veracity or otherwise of such complaints. In such circumstances, I am of the view that serious doubts remain about the authenticity, veracity and reliability of the evidence presented by the Petitioner in support of its aforementioned allegation of "serious frauds and/or illegalities."

On the contrary, the learned State Counsel for the Respondents submitted that the lists of voters of Branch Societies used for the elections held on 17.01.2023 had been compiled,

[3] *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1948] 1 KB 223.

[4] [1993] AC 682 at 701.

published and authenticated in compliance with the Code of Electoral Regulations (NWP) marked P5a and P5b. In particular, the learned State Counsel drew the attention of this Court to the following Regulations relating to the compilation of Lists of Voters are set out in Section II, thereof;

4.1 ***තත් කාලයේ වලංගු සමූපකාර නීතියට හා 8.1 (ඇ) නිලවරණ නියෝගයට අනුකූලව ඒ ඒ ප්‍රාදේශිකවල ඡන්දය දීමට සුදුසුකම් ඇති සියලුම සාමාජිකයින්ගේ නාම ලේඛන අධ්‍යක්ෂක මණ්ඩලය විසින් පිටපත් 04 කින් යුතුව සෑම වර්ෂයකම ජූනි 30 හා දෙසැම්බර් 31 යන දින වලින් අවසන් වන එක් එක් හය මාසය සඳහා සකස් කළ යුතුයි.*** *එම ඡන්දය හිමි සාමාජික නාම ලේඛන සකස් කළ යුත්තේ, ඒ එක් එක් හය මාසය අවසන් වී දින 10 ක් ඇතුළත පරිගණක යතුරු ලියනය කිරීමෙනි.*

4.2 ***මින් අනතුරුව මෙම නිලවරණ නියෝග මාලාවේ ඡන්ද නාම ලේඛන යනුවෙන් හඳුන්වනු ලබන ඡන්දය හිමි සාමාජික නාම ලේඛන 4.1 නිලවරණ නියෝගයේ සඳහන් වන අන්දමට නියමිත කාලය තුල නිවැරදිව සකස් කිරීමේ වගකීම අධ්‍යක්ෂක මණ්ඩලයට, සාමාන්‍යාධිකාරීට හා ලේකම්ට පැවරෙන අතර, එම ඡන්ද නාම ලේඛන නිවැරදි බවට සහතික කොට සභාපතිවරයා, අධ්‍යක්ෂකවරයෙකු, සාමාන්‍යාධිකාරී හා ලේකම් විසින් අත්සන් කර තිබිය යුතුයි.***

5.1 ***4.1 නිලවරණ නියෝගයේ සඳහන් වන පරිදි ඡන්ද නාම ලේඛන සකස් කර අවසන් කළ මාසයේ 11 දින සිට 25 දින දක්වා කාලය තුළ ගාස්තු නොගෙවා ඕනෑම අයෙකුට පරීක්ෂා කිරීමට හැකිවන පරිදි ඡන්ද නාම ලේඛන පහත සඳහන් කර ඇති ස්ථානවල ප්‍රසිද්ධියේ ප්‍රදර්ශනය කළ යුතුයි.***

(අ) සමිතියේ ප්‍රධාන කාර් යාලය;

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(ආ) ප්‍රාදේශික කාර් යාලයේ හෝ ප්‍රාදේශිකයේ හෝ ප්‍රාදේශික කාර් යාලයක්/ප්‍රාදේශිකයක් නොමැති අවස්ථාවලදී එම ප්‍රාදේශික බල ප්‍රදේශය තුළ අදාල සමිතියේම වෙනත් ව්‍යාපාරික ස්ථානයක් ඇති විට එම ස්ථානයේ හෝ එවැනි ව්‍යාපාරික ස්ථානයක් නොමැති විටක ප්‍රාදේශික බල ප්‍රදේශයේ පිහිටි ග්‍රාම නිලධාරී කාර් යාලයක හා අධ්‍යක්ෂක මණ්ඩලය තීරණය කරන පොදු ස්ථානයක;

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(ඇ) 55.4 නිලවරණ නියෝගයට යටත්ව සමිතියේ වෙබ් අඩවිය හෝ සමිතිය සතුව වෙබ් අඩවියක් නොමැති අවස්ථාවකදී වයඹ සමූපකාර සංවර්ධන දෙපාර්තමේන්තුවේ වෙබ් අඩවියට ඇතුළත් කිරීම සඳහා සුසංහිත තැටියක් (CD) හෝ අංකිත වීඩියෝ තැටියක් (DVD) හෝ සැනෙලි මතකයක් (Flash (Pen)drive) හෝ විද්‍යුත් තැපෑලක් (E-mail) හෝ මගින් ඡන්ද නාම ලේඛන වයඹ පළාත් සමූපකාර සංවර්ධන කොමසාරිස් හා සමූපකාර සමිති රෙජිස්ට්‍රාර් වරයා වෙත ලබා දීම.

6.1 ***4.1 හා 4.2 නිලවරණ නියෝගවලට අනුව සකස් කළ ඡන්ද නාම ලේඛනයට නමක් ඇතුල්වීමට සුදුසුකම් ඇති සාමාජිකයෙකුගේ නමක් ඇතුළත් වී නැති අවස්ථාවක, තම නම ඡන්ද නාම ලේඛනයට ඇතුළත් කර ගැනීම සඳහා 5.1 නිලවරණ නියෝගයට අනුව ඡන්ද නාම ලේඛන ප්‍රදර්ශනය කරන මාසයේ 11 දින සිට 25 දින දක්වා වූ කාලය තුළදී සමිතියේ ලේකම් මගින් අධ්‍යක්ෂක මණ්ඩලය වෙත පළමු අභියාචනයක් ඉදිරිපත් කිරීමට සාමාජිකයෙකුට අයිතියක් ඇත.*** *ඒ අයුරින් ලැබෙන අභියාචනා පිළිබඳව අධ්‍යක්ෂක මණ්ඩලය විසින් සලකා බලා යම් සාමාජිකයෙකුගේ නමක් ඡන්ද නාම ලේඛනයට ඇතුලත් කළ යුතු බවට අධ්‍යක්ෂක මණ්ඩලය තීරණය කරන්නේ නම්, ඡන්ද නාම ලේඛන ප්‍රදර්ශනය කළ මාසයට පසු එළඹෙන මාසයේ 10 වැනි දින හෝ ඊට පෙර හෝ එම නම ඡන්ද නාම ලේඛනයට ඇතුළත් කළ යුතුයි.*

7.1 ***4.1 හා 4.2 නිලවරණ නියෝගවලට අනුව සකස් කළ ඡන්ද නාම ලේඛනයේ යම් අයෙකුගේ නමක් ඇතුළත් වී තිබීම සම්බන්ධයෙන් සමිතියේ ලේකම් මගින් අධ්‍යක්ෂක මණ්ඩලය වෙත ලිඛිතව විරෝධතා ඉදිරිපත් කිරීමට ඕනෑම සාමාජිකයෙකුට අයිතියක් ඇත.*** *එවනි විරෝධතාවයක් සාමාජිකයෙකු විසින් ඉදිරිපත් කළ යුත්තේ 5.1 නිලවරණ නියෝගයට අනුව ඡන්ද නාම ලේඛන ප්‍රදර්ශනය කරන මාසයේ 11 දින සිට 25 දින දක්වා වූ කාලය තුළදී විරෝධතාවය සඳහා ඉදිරිපත් කරන හේතු ද සමඟයි.*

17.1 ***යම් ප්‍රාදේශිකයක් සඳහා නාම යෝජනා භාර ගැනීමට නියම කර ඇති දින නියමිත ඡන්ද මධ්‍යස්ථානයේදී පෙ.ව. 10.30 සිට 11.30 දක්වා වූ කාලය තුළදි පමණක් 8.2 නිලවරණ නියෝගයේ සඳහන් වන අදාල ප්‍රාදේශිකයේ ඡන්ද නාම ලේඛනයේ නම ඇතුළත් වී ඇති ඕනෑම සාමාජිකයෙකුට මධ්‍යස්ථානය භාර ඡන්ද නිලධාරියා/ සහකාර ඡන්ද නිලධාරියා විසින් 16.2 නිලවරණ නියෝගයට අනුව ප්‍රතික්ෂේප නොකරන ලද ඕනෑම නාම යෝජනාවක් පිළිබඳව තම විරෝධතා ලිඛිතව ඉදිරිපත් කිරීමට හැකියාව ඇත.*** (emphasis added).

It is observed that the aforementioned Regulations vest the responsibility of compiling the list of voters with the Board of Directors and General Manager/Secretary of a registered Co-operative Society and sets out a statutory framework and timelines applicable to this process. Such statutory framework, *inter alia* provides for an appeal in the case of the non-inclusion of a name (Regulation 6.1) as well as for objections to the inclusion of any ineligible voter (Regulation 7.1) prior to the date of the election. In addition, Regulation 17.1 provides for objections when nominations are received and Regulation 5.1 also require public display of lists of voters.

Most significantly, Regulation 4.2 specifies that the responsibility of compiling the list of voters is with the Board of Directors, General Manager and Secretary, who ought to sign and certify its accuracy. In this regard, the learned State Counsel submitted that, by the letter dated 29.12.2022 marked P9a, the lists of voters of all 23 Branch Societies of the Petitioner had been certified by the Board of Directors and General Manager/Secretary of the Petitioner, and was submitted for the approval of the 1st and 2nd Respondents. She further submitted that one of the signatories to P9a was the same General Manager/ Secretary of the Petitioner who has now affirmed the affidavit filed in the instant application seeking to assail the validity of the aforementioned lists of voters. The said letter P9a contains the following certification;

> *වතර්මානයේ බලපවත්වන සමූපකාර නීතියේ ලියාපදිංචි අතුරු ව්‍යවස්ථාවේ හා නිලවරණ නියෝග මාලාවේ සඳහන් නියමයන්ට අනුව පහත සඳහන් කර ඇති ඡන්දය හිමි නාමලේඛනවලට*
>
> *(අ) ඇතුලත් කිරීමේ සුදුසුකම් ඇති සියලුම සාමාජිකයින්ගේ නම් හා සාමාජික අංක ඇතුලත් කර ඇති බවද*
>
> *(ආ) සාමාජික ඉල්ලුම් පත්වල සඳහන් වන අන්දමට සාමාජිකයින්ගේ නම් හා සාමාජික අංක නිවැරදිව ඇතුලත්ව ඇති බවද*
>
> *(ඇ) ඇතුලත් කිරීමට නීත්‍යානුකූල සුදුසුකම් ඇති කිසිදු සාමාජිකයෙකුගේ නමක් ඇතුලත් කිරීම මග හැරී නොමැති බවද*
>
> *(ඈ) ඇතුලත් කිරීමට සුදුසුකම් නැති කිසිදු සාමාජිකයෙකුගේ නමක් ඇතුලත් කර නොමැති බවද*
>
> *(ඉ) කිසිම ව්‍යාජ තොරතුරක් ඇතුලත් කර නොමැති බවද*

(ඒ) කිසිම ව්‍යාජ තොරතුරක් ඇතුලත් කර නොමැති බවද

නම් සහතික කර ප්‍රකාශ කර සිටීමු.

I am of the view that the letter marked P9a, and the above certification, has the effect of both guaranteeing the accuracy as well as denoting the official sanction or approval of the Petitioner for the lists of voters to be used in the election. Therefore, due weightage should be given to its contents in determining the validity of the impugned lists of voters and its contents cannot be ignored or trivialized, as the Petitioner seeks to do.

At this juncture, I also wish to address the argument presented by the learned Counsel for the Petitioner that the "serious frauds and/or illegalities" were discovered after the elections, and, as such, no action could have been taken prior to the elections held on 17.01.2023. I am unable to accept this argument for several reasons.

In the first instance, since the Code of Electoral Regulations (NWP) have been in effect since the date of their publication in the Gazette, i.e., 22.08.2016, and, as factual circumstances giving rise to the purported frauds and/or illegalities would have existed prior to the date of the final approval of the lists of voters (and at the date of the elections, at the latest), there was no legal impediment for any aggrieved person to lodge an appeal or objections, as provided in the Regulations, and rectify any irregularity. Secondly, although the learned Counsel for the Petitioner contended that the former Chairman was responsible for the irregularities in the lists of voters, such fact would not have prevented the other Directors and the General Manager/Secretary from taking action to rectify same, if they wished to do so, since the responsibility of compiling the said lists is vested collectively with the Board of Directors in terms of Regulation 4.2. Hence, I am unable to find any plausible reasons in the petition for the failure to take timely action, if there were any errors or irregularities in the compilation of the lists of voters.

The failure to submit an appeal or objections when the lists of voters were compiled was also considered in Writ Application No. HCW 02/2023 before the Provincial High Court of the North-Western Province, when the application for interim relief was considered. As submitted by the learned State Counsel for the Respondents, the learned High Court Judge in her order refusing interim relief dated 06.04.2023 (P16) has *inter alia* found that the Petitioner in the said application had failed to submit an appeal or objections in a timely manner, if the lists of voters were not correctly compiled (vide page 22 of the order).

In view of the aforementioned reasons and the narrative relating to the conduct of the elections set out in the petition itself, I am inclined to accept the position taken up by the Respondents that the lists of voters used for the elections held on 17.01.2023 had been compiled in accordance with the law and to reject the Petitioner's contention that it was tainted with "serious frauds and/or illegalities."

Contrary to the position taken up by the Petitioner, the correspondence annexed to the petition also demonstrate that the 1st and 2nd Respondents have actively engaged and exchanged views with the Petitioner regarding the allegations of "serious frauds and/or illegalities" in the compilation of the lists of voters over a protracted period, as evidenced by the documents marked P45a-P45h and P46a-P46i. For instance, the letters dated 27.02.2023 and 26.09.2023 marked P45a and 45d contain detailed responses to the queries that had been raised by the

Petitioner. Thus, it could be reasonably concluded that the Petitioners were fully aware of the position of the 1st and 2nd Respondents regarding such allegations, from the very outset.

2. *Appointment of an Authorized Officer to Convene Meetings of Executive Committees of Branch Societies*

I now proceed to examine the conduct of the 1st and 2nd Respondents in appointing the 4th Respondent to convene meetings of Executive Committees of Branch Societies and the General Assembly of the Petitioner. In this context, I propose to examine the legal mandate of the 1st Respondent to make such appointment as well as whether such mandate has been exercised in a rational and reasonable manner.

I propose to commence the inquiry into this matter with the letter of appointment issued by the 1st Respondent appointing the 4th Respondent as authorized officer dated 05.12.2024 marked P48. In the interests of clarity, the contents of the said letter are reproduced *in toto*;

වයඹ පළාත් සමූපකාර සංවර්ධන දෙපාර්තමේන්තුව.

මගේ අංකය - NWP/CCD/4/1/1/19/ නි.ව දිනය - 2024.12.05

කේ.ඒ.කේ.සුමේධ මයා,
සමූපකාර සංවර්ධන නිලධාරී,
සමූපකාර සංවර්ධන සහකාර කොමසාරිස් කාර්යාලය,
හලාවත.

සී/ස ආරච්චිකට්ටුව විවිධ සේවා සමූපකාර සමිතියේ කාරක සභා රැස්වීම් කැඳවීම සඳහා බලය පැවරීම.

උක්ත සමිතියේ 2023.01.05 දින නාමයෝජනා භාරගැනීමද 2023.01.17 දින ඡන්දය පැවැත්වීමද සිදු කර ප්‍රාදේශීක 23 කට අදාලව ප්‍රාදේශීක කාරක සභිකයින් තෝරා පත්කරගෙන ඇත. සමිතියේ ප්‍රාදේශිකවල නිලධාරී මණ්ඩලය හා මහ සභා නියෝජිතයින් පත්කර ගන්නා ලෙස මාගේ සමාංක හා 2024.01.22 සහ 2024.04.02 දිනැති ලිපි මඟින් ද හලාවත සමූපකාර සංවර්ධන සහකාර කොමසාරිස්ගේ අංක NWP/CH/AC/2022/2023 නිලවරණ හා 2023.02.27, 2023.03.21, 2023.04.10, 2023.05.17, 2023.08.14 හා 2023.11.01 දිනැති ලිපි මඟින් ද සමිතියේ ලේකම්/සාමාන්‍යාධිකාරී දැනුවත් කර ඇත. එසේ වුවද සමිතියේ ප්‍රාදේශිකවල නිලධාරී මණ්ඩලය පත්කිරීමට හා මහ සභා නියෝජිතයින් පත්කිරීමට මේ වනතෙක් එකී සමිතියේ ලේකම් විසින් කටයුතු කර නොමැත.

2. ඒ අනුව 1989 අංක 12 දරන පළාත් සභා (අනුශාංගික විධිවිධාන) පනත සමඟ කියවෙන 1983 අංක 32 සහ 1992 අංක 11 දරන සමූපකාර පනත් වලින් සංශෝධිත 1972 අංක 5 දරන සමූපකාර සමිති පනතේ 61 වැනි වගන්තිය ප්‍රකාරව පනවා ඇති 2018.10.04 දිනැති අංක 2091/63 දරන අති විශේෂ ගැසට් පත්‍රයෙන් සංශෝධිත අංක 93/5 හා 1974.01.10 දිනැති ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ අතිවිශේෂ ගැසට් පත්‍රයෙන් ප්‍රකාශිත 1973 සමූපකාර සමිති රීති මාලාවේ 18 (ii) රීතියෙන් මා වෙත පැවරී ඇති බලතල ප්‍රකාරව ලියාපදිංචි සමූපකාර සමිතියක් වන සී/ස ආරච්චිකට්ටුව විවිධ සේවා සමූපකාර සමිතියේ මෙතෙක් නිලධාරී මණ්ඩලය පත්කිරීම (සභාපති, උපසභාපති හා ලේකම්) හා මහ සභා නියෝජිතයින් පත්කිරීම සිදුකර නොමැති

ප්‍රාදේශිකවල, නිලධාරී මණ්ඩලය පත්කිරීම (සභාපති, උපසභාපති හා ලේකම්) හා මහ සභා නියෝජිතයින් පත්කිරීම සඳහා ප්‍රාදේශික කාරක සභා රැස්වීම් කැඳවීමට කන්කානිගේ අරුණ කෞටිල්‍ය සුමේධ වන ඔබට මෙයින් බලය පවරමි.

3. ඒ අනුව අදාල ප්‍රාදේශිකවල නිලධාරී මණ්ඩලය පත්කිරීම (සභාපති, උපසභාපති හා ලේකම්) හා මහ සභා නියෝජිතයින් පත්කිරීම කඩිනමින් සිදුකර මා වෙත වාර් තා කරන ලෙස වැඩිදුරටත් කාරුණිකව දන්වමි.

4. එවැනි කාරක සභා රැස්වීමකට සමිතියේ යථා පරිදි කැදවන ලද කාරක සභා රැස්වීමක ඇති සියළු බලතල හිමිවේ.

අත්සන් කලේ,

වසන්ත ගුණසේකර
සමුපකාර සංවර්ධන කොමසාරිස්/
රෙජිස්ට්‍රාර්(වයඹ)

The above letter, which is copied to the 2nd Respondent and the Petitioner, clearly sets out the legal mandate of the 1st Respondent to appoint the 4th Respondent and the circumstances that led to the making the appointment. As referred to in the second paragraph of P48 above and as submitted by the learned State Counsel, the statutory authority for the 1st Respondent to appoint an authorized officer in respect of a registered Co-operative Society is derived from the Rule 18(ii) of the Co-operative Societies Rules, 1973 made by the Minister in terms of section 61(1) of the Co-operative Societies Law No. 5 of 1972 (as amended) and published in the Government Gazette Extraordinary No. 93/5 dated 10.01.1974, as amended by Government Gazette Extraordinary No. 2091/63 dated 04.10.2018. The said Rules have been annexed to the petition marked P40a and P40b.

Rule 18, in its entirety, is cited below, the interests of completeness and clarity;

18. (i) The Registrar, or any person authorised in that behalf by general or special order of the Registrar, may at any time summon a special general meeting of any registered society in such manner and at such time and place as the Registrar or such person may direct. The number of members present in person shall form the quorum (unless such number is less than three) and such meeting shall have all the powers, including the power to amend the by-laws, of a duly convened meeting of the society.

(ii) The Registrar or any person authorised by him in writing in that behalf may at any time summon a meeting of the committee of any registered society in such manner and at such time and place as the Registrar or such person may direct. The number of persons present at such meeting shall form a quorum (unless such number is less than three) and such meeting shall have all the powers of a committee meeting duly convened in accordance with the by-laws of the society.

(iii) Where a special general meeting under Rule 18 (i) or a committee meeting under Rule 18 (ii) is summoned by the Registrar or a person authorised by the Registrar, the Registrar or such authorised person shall have the power to order the production of such

books and documents of the society as he may consider necessary. It shall be the duty of the secretary of the society to comply with every such order.

The Registrar or any person authorised by him, may preside at any meeting summoned under Rule 18 (i) or 18 (ii) but shall have no vote; in the event of an equality of votes the chairman shall have a casting vote.

(iv) The Registrar or any person authorised by him, in writing by general or special order, shall be entitled to be present and to speak at any general meeting or committee meeting of any registered society.

Provided, however, that the Registrar or any person so authorised by him shall not have the right to vote at any such meeting.

It is evident from the provisions of the aforementioned Rule 18(ii) that the appointment of the 4th Respondent to convene the meetings of the Executive Committees of Branch Societies and to appoint their office bearers and representatives to the General Assembly of the Petitioner clearly falls within the powers conferred upon the 1st Respondent therein, in the capacity as the Registrar of Co-operatives of the North-Western Province.

Therefore, the next issue to be considered is whether the exercise of such power by the 1st Respondent was rational and reasonable in the facts and circumstances of the instant case. The first paragraph of P48 above notes the fact that, despite repeated directions, the General Manager/ Secretary of the Petitioner had failed to convene meetings of Branch Societies to appoint their office bearers and representatives to the General Assembly. In fact, the current Board of Directors of the Petitioner have consistently maintained the position that the General Assembly should not convene in view of unresolved issues pertaining to the Branch Societies elections.

It is observed that, since it consists of representatives of Branch Societies, the General Assembly cannot be convened unless and until such representatives of Branch Societies are appointed. Hence, the resultant position from stance adopted by the Petitioner was that that the General Assembly could not be convened, notwithstanding the three-month time limit specified for such purpose in By-Law 33(2) of the Petitioner's By-Laws. Such three-month period expired on 17.04.2023. In such circumstances, as submitted by the learned State Counsel, the 1st Respondent was compelled to intervene by appointing an Authorized Officer to ensure that statutory obligations cast on the Petitioner by its own constituent By-Laws were carried out, given the repeated refusal of its current Board of Management to do so for a period of almost one (01) year and ten (10) months.

I am inclined to accept the submission of the learned State Counsel. Viewed from such attendant factual circumstances, I find that the appointment of the 4th Respondent by the 1st Respondent to carry out the functions set out in P48 and the action taken pursuant thereto by the 4th Respondent by publishing the Notice marked P49 cannot in any manner be considered as being irrational or unreasonable, as alleged by the Petitioner. If at all, I am of the view that such intervention by the 1st Respondent should have been made earlier, since the term of office of Executive Committee members is three (3) years, and one-year (01) and ten (10) months had already lapsed by the time such intervention was made. I am further inclined to add that, had the 1st Respondent not intervened, the legitimately elected members of the Branch Societies

at the elections held on 17.01.2024 would continue to be unfairly prevented from participating in the management and administration of the Petitioner.

In this context, I also wish to address the allegation of *mala fides* made against the 1st and 2nd Respondents in the Petition. Although it is alleged that the conduct of the 1st and 2nd Respondents is politically motivated (vide paragraph 56 of the Petition), neither the contents of the petition nor the documents annexed thereto nor the submissions made by the Counsel substantiate such allegation.

In such circumstances, I am of the view that the Petitioner has failed to meet the threshold standard expected to establish *mala fides* in judicial review applications. With regard to such standard required, this Court has held in ***Bandaranayake v. Judicial Service Commission***,[5] as follows (per Sripavan J.);

> *"Learned Counsel also urged bad faith on the part of the first respondent Commission. "The plea of mala fides is raised often but it is only rarely it can be substantiated to the satisfaction of Court. Merely raising doubt is not enough. There should be something specific, direct and precise to sustain the plea of mala fides. The burden of proving mala fides is on the individual making allegation as the order is regular on its face and there is a presumption in favour of the administration that it exercises its power in good faith and for the public benefit." Principles of Administrative Law (Jain & Jain, 4th Edition 1988 Page 564) Accordingly, the court will not in general entertain allegations of bad faith made against the repository of a power, unless bad faith has been expressly pleaded and properly enumerated in detail. [Vide* ***Gunasinghe v Hon Gamini Dissanayake]***.[6] *The petition however did not set out in detail the allegations of mala fide against the first respondent Commission."*

Legal Objections Raised by the Respondents and Analysis

Apart from the above, the learned State Counsel for the Respondents also raised several legal objections relating to the maintainability of this application as well as the conduct of the Petitioner.

1. Lack of *Uberrima Fides*

Since the conduct of the Petitioner has already been discussed in considerable detail above, I now wish to consider the merits of the objection raised by the State Counsel that there was serious lack of *uberrimae fides* on the part of the Petitioner.

The requirement of uberrima fides in granting relief in prerogative relief is well established in our law, and, as such, I do not intend to dwell on same in detail herein. In ***Jayasinghe v. The National Institute of Fisheries and Nautical Engineering and others,***[7] the duty cast upon a party seeking relief from Court was explained by the Supreme Court in the following terms (per Yapa J);

[5] [2003] 3 Sri L.R 101.
[6] [1994] 2 Sri L.R 132.
[7] [2002] 1 Sri L.R. 27.

"When a litigant makes an application to this Court seeking relief, he enters into a contractual obligation with the Court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly. This is a duty cast on any litigant seeking relief from Court. In the case of ***Blanca Diamonds (Pvt) Limited v. Wilfred Van Els and Two Others,***[8] *the Court highlighted this contractual obligation which a party enters into with the Court, requiring the need to disclose uberrima fides and disclose all material facts fully and frankly to Court. Any party who misleads Court, misrepresents facts to Court or utters falsehood in Court will not be entitled to obtain redress from Court. It is a well-established proposition of law, since Courts expect a party seeking relief to be frank and open with the Court. This principle has been applied even in an application that has been made to challenge a decision made without jurisdiction. Further, Court will not go into the merits of the case in such situations. Vide* ***Rex v. Kensington Income Tax Commissioners; Princess Edmond De Polignac.***[9] *This principle of uberrima fides has been applied not only in writ cases where discretionary relief is sought from Court, but even in Admiralty cases involving the grant of injunctions."*

The learned State Counsel referred to several aspects in the conduct of the Petitioner demonstrating a serious lack of uberrima fides on its part. One such aspect was the conduct of the General Manager/Secretary of the Petitioner, who had certified the veracity of the lists of voters used for the election held on 17.01.2023 and signed P9a and had now sought to assail the validity of the same in the instant application. Another aspect referred to by the learned State Counsel was the contradictory positions taken up by the Petitioner in the instant application and in the writ application before the Provincial High Court. It was pointed out that, although the Petitioner has sought to prevent the convening of the meetings of the Executive Committees of Branch Societies and the General Assembly in the instant application, it had nevertheless not supported the application for interim relief in the Provincial High Court Writ Application No. HCW 02/2023, when the petitioner in that case had sought similar relief. In the order of the Learned High Court Judge, it is specifically recorded that the 1st, 8th and 220th respondents, who constitute the Petitioners in the instant application, had sought to associate themselves with the submissions made by other respondents who had opposed the grant of interim relief (vide page 22).

The learned State Counsel submitted that such conduct constituted "approbation and reprobation," which is repugnant to the law.

In ***Ceylon Plywoods Corporation v. Samastha Lanka G.N.S.M. & Rajya Sanstha Sevaka Sangamaya***[10] (per S. N. Silva, J) held that *"the doctrine of approbate and reprobate (quod approbo non reprobo) is based on the principle that no person can accept and reject the same instrument".* A Divisional Bench of the Supreme Court has explained the manner in which the doctrine applies in ***Ranasinghe v. Premadharma and others***,[11] in the following terms (per Sharvananda CJ);

[8] [1997] 1 Sri LR 360.

[9] [1917) 1 KB 486.

[10] [1992] 1 Sri L.R. 157. See also ***Colombo Land and Development Company Limited v. Anglo Asian Supermarket Limited*** CA (Writ) Application No. 1572/2006, decided on 28.11.2013 (per Salam J).

[11] [1985] 1 Sri LR. 63.

"In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts the one he cannot afterwards assert the other; he cannot affirm and disaffirm. Hence a defendant who denies tenancy cannot consistently claim the benefit of the tenancy which the Rent Act provides."

The application of the doctrine in writ applications has been discussed by this Court in ***T. M. Premadasa v. The Ceylon Electricity Board and others***,[12](per Janak de Silva J.) as follows;

"… though the jurisdiction of this Court is constitutional, writ of mandamus being a discretionary remedy there exists several grounds on which relief can be refused. One such situation is where the Petitioner seeks to approbate and reprobate as outlined above."

In the instant case, I am inclined to the view that a case of "approbation and reprobation" can be made out against the Petitioner both in relation to the certification of the lists of voters and on the positions taken up the two writ applications.

The learned State Counsel also submitted that the Petitioner, by its refusal and delay to convene the Executive Committees of Branch Societies and the General Assembly for a period of over one (01) year and ten (10) months, even after the application for interim relief in the aforementioned writ application in the Provincial High Court had been refused and despite repeated directions made by the 1st and 2nd Respondents, had caused grave prejudice to the rights of members elected at the elections held on 17.01.2023 and prevented them from participating in the management and administration of the Petitioner. The learned State Counsel further submitted that by the delay in convening the General Assembly, the current Board of Directors have and continue to remain in office beyond their stipulated term of office, as per By-Law 55 of the Petitioner's By-Laws marked P2.

I am satisfied that the aforementioned conduct, which is borne out by documents annexed to the petition itself demonstrate a serious lack of uberrima fides on the part of the Petitioner, particularly on the part of its Board of Directors, as contended by the State Counsel.

2. Reliefs Misconceived in Law

The learned State Counsel sought to assail the reliefs sought by the Petitioner in the instant application on two bases; one such basis was that the same relief had been substantively sought in writ application filed before the Provincial High Court. It was submitted that the Petitioner had taken up a contrary position in the said application to the one taken in the instant application when interim relief was considered and also that interim relief had been refused therein. Whilst I note the similarities in the reliefs sought and the contradictory positions taken up by the Petitioner in the aforementioned two proceedings, I am nevertheless of the view that such facts *per se* do not preclude the Petitioner from seeking the reliefs prayed for in the instant application.

The second basis relied upon by the learned State Counsel was that the reliefs misconceived in law since the Petitioner had not sought to quash the results of the election held on 17.01.2023, although the Petitioner's entire case was founded on irregularities in conduct of the said

[12] CA (Writ) Application No. 129/2013, decided on 22.01.2020.

election. The learned Counsel's response was that it was not necessary to seek the quashing of the election and that matter should be left for the 1st Respondent. However, I note that the Co-operatives Branch Societies Elections Rules (NWP) marked P5a and P5b do not contain any provisions permitting the 1st Respondent either to overturn or disregard the results of an election held thereunder. Neither do the Petitioner's By-Laws marked P2 permit the 1st Respondent to refrain from convening Executive Committees of Branch Societies and the General Assembly, once members to such Executive Committees are elected. In such circumstances, considering the very heavy reliance placed on irregularities in the conduct of the election, it was incumbent upon the Petitioner to seek to invalidate the results of same. In view of the Petitioner's failure to do so, I am of the view that the reliefs sought in the instant application are misconceived.

3. Necessary Parties

The learned State Counsel also submitted that the failure to cite the members of Executive Committees of Branch Societies elected at the elections held on 17.01.2023, who are material and necessary parties, is fatal to the instant application. The learned State Counsel submitted that, as such members are entitled to be represented in the General Assembly of the Petitioner and participate in its management and administration, grave prejudice is caused if the reliefs sought in the instant application are granted.

In ***The Ark Universal (Private) Limited v M. Umamagal, The Divisional Secretary Marintimepattu and 2 others***,[13] this Court (per Corea J.) has provided a very useful account on the current status of the law regarding necessary parties in writ applications in the following manner;

> *"A necessary party to a Writ Application was defined by Gamini Amaratunga, J. in* ***Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thera and 4 others (2011) 2 SLR 258;***
>
> *1) "The first rule regarding the necessary parties to an application for a Writ of Certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made a Respondent to the application.*
>
> *2) The next rule is that those who would be affected by the outcome of the Writ application should be made Respondents to the application.*
>
> *3) A necessary party to an application for a Writ of Mandamus is the officer or the authority who has the power vested by law to perform the act or the duty sought to be enforced by the Writ of Mandamus. All persons who would be affected by the issue of Mandamus also shall be made Respondents to the application."*
>
> *In* ***Rawaya Publishers and another v. Wijeyadasa Rajapaksa (2001) 3 SLR 213*** *it was held,*
>
> *"In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question*

[13] CA (Writ) Application No. 56/2024, decided on 30.01.2025.

involved in the proceedings… If they are not made parties then the petition can be dismissed in limine. It has also been held that person vitality affected by the writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity (vide Prabodh Derma v. State of Uttara Pradesh AIR 1985 – SC 167 also see Encyclopedia of Writ By P.M. Bakshi).”"

In the instant case, the petition itself states that 207 members had been elected to Executive Committees and the petition in Writ Application No. HCW 02/2023 marked P15 discloses their identities. Therefore, the Petitioner was fully aware of the identities of the members elected to Executive Committees of Branch Societies. Considering the adverse impact upon their rights and interests, if the reliefs sought by the Petitioner are to be granted, I am of the view that such members are necessary and material parties to the instant application. Hence, I uphold the objection raised by the learned State Counsel that the Petitioner has failed to cite necessary and material parties in this application.

Conclusion and Orders of Court

For the reasons set out above, I hold that the Petitioner has failed to establish a *prima facie* case for the issuance of notice. The legal objections raised by the Respondents, as determined by me above, too, militate against the grant of prerogative relief to the Petitioner. Therefore, I decline to issue formal notice and the application is accordingly dismissed. For avoidance of doubt, I further state that the order made by this Court on 17.12.2024 to maintain the status quo will stand dissolved and cease to operate from the date hereof. No costs.

Application is dismissed.

Judge of the Court of Appeal

Mayadunne Corea J.

I agree.

Judge of the Court of Appeal