

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 145 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

Vithana Kuruppu Aarachchige Anura
Municipal Commissioner,
Colombo Municipal Council,
Townhall, Colombo 07.

Petitioner

Case No. CA/MC/Rev/12/2017
Kesbewa Case No. 6304

Vs.

1. Mahesh Wickrama
No. 582/01, Werahera, Boralesgamuwa.
2. Dammika Priyantha Kathriarachchi
No. 578, Werahera, Boralesgamuwa.
3. Lokuge Herbert Perera
No. 582, Werahera, Boralesgamuwa.
4. Municipal Commissioner
Municipal Council of Moratuwa, Moratuwa.
5. Municipal Commissioner
Municipal Council of Dehiwala-Mount Lavinia,
Council Lane, Dehiwala.
6. Secretary
Urban Council of Kesbewa, Kesbewa.
7. Secretary
Urban Council of Boralesgamuwa,
Boralesgamuwa.

8. Secretary
Homagama Pradeshiya Sabhawa, Homagama.
9. Secretary
Urban Council of Maharagama, Maharagama.
10. Municipal Commissioner
Municipal Council of Sri Jayawardenepura,
Kotte, Rajagiriya.
11. Central Environmental Authority
"Parisara Piyasa", No. 104,
Robert Gunawardene Mawatha, Battaramulla.
12. Environmental Foundation Ltd.
No. 146/34, Havelock Road, Colombo 05.
13. Waste Management Authority (Western
Province),
"Srawasthi Mandiraya" No. 32,
Sir Marcus Fernando Mawatha, Colombo 07.
14. Nalin Mannapperuma
Director,
Waste Management Authority (Western
Province),
"Srawasthi Mandiraya" No. 32,
Sir Marcus Fernando Mawatha, Colombo 07.
15. Super Kleen (Pvt) Ltd.
No. 140/03, Pitipana North, Homagama.
16. Registrar,
Magistrate's Court, Kesbewa.

Respondents

Before: Janak De Silva J.

Counsel:

Senany Dayaratne with Nishadi Wickremasinghe for the Petitioner

K.H.D. Priyadharshani for the 1st to 3rd Respondents

Geetha Sriyananda for 4th Respondent

J.P. Hapuarachchi for the 5th Respondent

Neville Abeyratne P.C. with Kaushalya Abeyratne and Shenalie Goonewardena for the 10th, 10(a) and 10(B) Respondents

Rajeeva Amarasuriya with Shavanth Samarakoon and A. Dorananda for the 13th and 14th Respondents

Written Submission Filed On:

Petitioner on 17.09.2018 and 03.04.2019

13th and 14th Respondents 02.10.2018 and 18.03.2019

Decided On: 22.07.2020

Janak De Silva J.

At the time this application was filed the Petitioner was the Municipal Commissioner of the Colombo Municipal Council. It is an application filed in terms of Article 145 of the Constitution seeking to inter alia set aside/revise the order of the learned Magistrate of Kesbewa dated 22.06.2017 refusing the application of the Chief Legal Officer of the Colombo Municipal Council to dispose refuse at the Karadiyana Waste Management Facility.

The Petitioner claims that he has been empowered to exercise the powers, perform the duties and discharge the functions of the Municipal Council of Colombo under the provisions of section 286A of the Municipal Councils Ordinance as amended (Ordinance) subsequent to the dissolution of the Colombo Municipal Council.

This Court has already issued notice and granted interim relief.

Whilst the main matter was pending determination, the Petitioner filed an amended caption which sought to amend 1a and 1b Petitioners to show the Municipal Council of Colombo and Rosy Senanayake, Mayor of the Municipal Council of Colombo respectively. Similar amendments were to be made to 4th, 5th, 6th, 7th, 8th, 9th and 10th Respondents in relation to the Municipal Councils and Urban Councils of Moratuwa, Dehiwela, Kesbewa, Borlasgamuwa, Homagama, Maharagama and Sri Jawardenepura-Kotte to bring in the respective Mayors, Chairman and the Council.

The 13th and 13th Respondents objected to this application and this order is on whether the amended caption should be allowed.

According to the Petitioner, at the time this application was filed, the Colombo Municipal Council had been dissolved by operation of law, as its term had come to an end and the Petitioner had been empowered by letter dated 05.07.2016 issued by the Commissioner of Local Government of the Western Province to exercise the powers, perform the duties and discharge the functions of the Municipal Council of Colombo under section 286A of the Ordinance as amended. This is the reason given for the Petitioner to have filed this application in terms of Article 145 of the Constitution.

The Petitioner further avers that at the local government elections held on 10.02.2018, new councilors were appointed to the Colombo Municipal Council, as well as the other local authorities, including a new Mayor. This is the stated reason for the amended caption to be filed.

The learned counsel for the 13th and 14th Respondents contends that this application to amend the caption is misconceived in law and strenuously objected to the amended caption. He further submitted that they have raised an objection to the maintainability of this application on the basis of locus standi and this amended caption is an attempt by the Petitioner to overcome this objection. It was further submitted that the application to amend the caption is vitiated due to laches and the closure of the pleadings and that several decisions have held that intervention is not possible in terms of the applicable rules.

The first issue to be addressed is whether the Municipal Council of Colombo was dissolved as claimed by the Petitioner.

Although the Petitioner averred in the petition that he has been empowered by letter dated 05.07.2016 issued by the Commissioner of Local Government of the Western Province to exercise the powers, perform the duties and discharge the functions of the Municipal Council of Colombo under section 286A of the Ordinance as amended, it was not produced with the pleadings.

The 13th and 14th Respondents produced that letter with the first set of written submissions which was served on the Petitioner to which the Petitioner filed reply written submissions. The contents of this letter were not denied by the Petitioner.

Upon a careful examination of letter dated 05.07.2016 issued by the Commissioner of Local Government of the Western Province, it is clear that at the material time the Municipal Council of Colombo was not dissolved as claimed by the Petitioner but that the term of office of its members had come to an end. This fact has an important bearing in the determination of the application to amend the caption.

The Ordinance has two different regimes operating when a Municipal Council is dissolved and when the term of office of its members ends.

In terms of section 3 of the Ordinance, a Municipal Council is *constituted* when an area is declared by Order under section 2 of the Ordinance. Therefore, the constitution of the Municipal Council takes place independent of the election to elect its members.

In terms of section 34(1) of the Ordinance, once a Municipal Council is *constituted* as explained above, it shall be a corporation with perpetual succession and a common seal and may sue or be sued by such name and designation as may be assigned to it under the Ordinance. The expression "perpetual succession" denotes no more than the continuing existence of a company or a corporation irrespective of changes in its membership [per G.P.S. De Silva J. (as he was then) in *Deejay Industries Limited v. Dehiwela-Mount Lavinia Municipal Council* (1986) 2 Sri.L.R. 365 at 373].

Unlike natural persons, legal persons are created and made extinct by law. The consequences of its creation as well as its extinction are dictated by law. Hence in the absence of any specific statutory provision, the Municipal Council so created continues to be in existence as a legal person.

Section 10 of the Ordinance deals with the term of office of its members ending in which event section 286A of the Ordinance [as amended by Local Authorities Elections (Amendment) Act No. 48 of 1983] is engaged. It reads:

"286A. Where the Council is not able to discharge its functions ***by reasons of the Mayor, and Deputy Mayor ceasing to hold office***, the Commissioner shall, during any period that lapses between the occurrence of the vacancies in respect of those offices and the filling of those vacancies in accordance with the provisions of the Local Authorities Elections Ordinance have, exercise, perform and discharge all the rights, privileges, powers, duties and functions vested in, or conferred or imposed on, the Council, the Mayor or Deputy mayor by this Ordinance or by any other written law." (Emphasis added)

In this situation, there is no specific provision in the Ordinance which also terminates the legal personality of the Municipal Council.

However, section 277 of the Ordinance makes specific provision for the Minister to dissolve a Municipal Council. Once a Municipal Council is "dissolved" in terms of section 277 it means the cessation of its legal existence.

“Dissolution” is the antithesis of “constitution”. Once the Municipal Council is “dissolved” in terms of section 277 it means the cessation of its legal existence. Dissolution cannot be reconciled with its continued existence. Upon dissolution it suffers a legal death and cannot sue or be sued [per G.P.S. De Silva J. (as he was then) in *Deejay Industries Limited v. Dehiwela-Mount Lavinia Municipal Council*(supra)].

Therefore, I hold that when the term of office of the members of the Colombo Municipal Council came to an end, the Municipal Council of Colombo did not cease to exist as a legal entity and it was open for it to be a Petitioner in this case which was not done. The attempt by the Petitioner now to bring the Council as a Petitioner by way of amendment of caption must be rejected in these circumstances. In any event, the application has been made belatedly and lasches stand in the way of allowing that application.

I must hasten to add that this conclusion should not in any way be taken as acknowledging the objection raised by the 13th and 14th Respondents that the Petitioner does not have locus standii. That matter is yet to be determined.

For the same reasons, the application to amend the caption to include the Municipal Councils and Urban Councils of Moratuwa, Dehiwela, Kesbewa, Boralasgamuwa, Homagama, Maharagama and Sri Jawardenepura-Kotte is rejected.

That leaves only the issue of whether the amendment of caption to bring in the Chairman of the respective Councils should be allowed. In this situation, I am inclined to grant the application to amend the caption since by the time this application was filed none of the Chairman of the said Councils were in office as the elections was not held.

The submission that the rules of this Court does not allow for the intervention is not applicable as those cases dealt with intervention in writ applications. This is an application made in terms of Article 145 of the Constitution. In any event, what is sought to be done is not an intervention but merely an amendment of caption to bring in a party who was not holding office at the time this application was filed.

Application to amend the caption is partly allowed.

Judge of the Court of Appeal