

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

In the matter of an Application for  
Revision under Article 138 read with  
Article 154P of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

Vijaya de Alwis  
Reservoir Road,  
Hiyare,  
Galle.

**Petitioner**

**CA (PHC) APN 46/2015  
HC Galle No. Writ 15/2014**

**VS.**

1. Shan Wijeyalal de Silva,  
Chief Minister and Minister of Local  
Governance,  
Southern Province,  
Chief Minister's Office,  
Dakshinapaya,  
Labuduwa,  
Galle.
2. Hemakumara Nanayakkara,  
Governor, Southern Province,  
Governor's Office,  
Upper Dickson Road,  
Galle.

3. W.K.K. Athukorale,  
Chief Secretary of Southern Province,  
The Secretariat,  
S.H. Dahanayake Mawatha,  
Kaluwella,  
Galle.
4. Saman Dharshana Pandikorala,  
Secretary,  
Chief Ministry of Southern Province,  
Chief Minister's Secretariat,  
Dakshinapaya,  
Labuduwa,  
Galle.
5. Dileka Kudachchi,  
Commissioner of Local Government,  
Southern Province,  
6<sup>th</sup> Floor, District Secretariat,  
Galle.
6. T.G. Eashawathi,  
Secretary,  
Akmeemana Pradeshiya Sabha,  
Pinnaduwa,  
Walahanduwa.
7. Akmeemana Pradeshiya Sabha,  
Pinnaduwa,  
Walahanduwa.
8. Anil Priyadardhana Jagoda,  
Chairman  
Akmeemana Pradeshiya Sabha,  
Pinnaduwa,  
Walahanduwa.

**Respondents**

**AND NOW BETWEEN**

Anil Priyadarshana Jagoda,  
Chairman,  
Akmeemana Pradeshiya Sabha,  
Pinnaduwa,  
Walahanduwa.

**8<sup>th</sup> Respondent – Petitioner**

**VS.**

Vijaya de Alwis,  
Reservoir Road,  
Hiyare,  
Galle.

**Petitioner-Respondent**

1. Shan Wijeyalal de Silva,  
Chief Minister and Minister of Local  
Governance,  
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Akmeemana Pradeshiya Sabha,  
Pinnaduwa,  
Walahanduwa.
7. Akmeemana Pradeshiya Sabha,  
Pinnaduwa,  
Walahanduwa.

**Respondents - Respondents**

**BEFORE:**            **W.M.M. Malinie Gunaratne, J. and  
P.R. Walgama, J.**

**COUNSEL:**        Nihal Jayawardena, P.C. with Malik Hanana for the  
Petitioner.

M.U.M. Ali Sabry P C with S. Alwis for the 1<sup>st</sup> and 4<sup>th</sup>  
Respondents.

Janak de Silva, D.S.G for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.  
Rasika Dissanayake for the 7<sup>th</sup> Respondent.  
Vidura Ranawaka with G. Jayasinghe for the Petitioner-  
Respondent.

Supported interim Order on : 15.06.2015 and 29.06.2015.

Written submissions filed on : 15.07.2015

Decided on: 15.12.2015

**Malinie Gunaratne, J.**

The Petitioner Respondent (hereinafter referred to as the Respondent) filed a Writ Application in public interest bearing No. WRIT/15/2015 dated 15.12.2015 in the High Court of Galle, seeking *inter alia*;

- (a) a Writ of Mandamus directing the 1<sup>st</sup> Respondent, Chief Minister of Southern Province to commence a disciplinary inquiry against the 8<sup>th</sup> Respondent – Petitioner (hereinafter referred to as the Petitioner) who was the Chairman of the Akmeemana Pradashiya Sabha under the Provisions of Section 185 of the Pradashiya Sabha Act No.15 of 1987 as amended;
- (b) a Writ of Mandamus directing the 1<sup>st</sup> Respondent Chief Minister of Southern Province to suspend the Petitioner from functioning as the Chairman of the Akmeemana Pradeshiya Sabha during the disciplinary inquiry, under the Provisions of Section 185 of the Pradeshiya Sabha Act No. 15 of 1987 as amended,
- (c) Interim relief restraining the Petitioner from functioning as the Chairman of the Akmeemana Pradeshiya Sabha until the final determination of the Writ Application filed by the Respondent.

Firstly the matter was supported only for notices on the 17.12.2014 and the learned High Court Judge has issued notices on the Respondents returnable on 22.01.2015. For the interim relief the matter was supported on the 26<sup>th</sup> of March 2015. The Respondents objected to the said relief being granted. However, the learned High Court Judge delivered the Order on 26<sup>th</sup> March 2015, granting an interim relief, restraining the Petitioner from functioning as the Chairman of the Akmeemana Pradashiya Sabha until the final determination of the Writ Application.

Aggrieved by the said Order, the Petitioner in this application has sought to set aside and/or vacate the said order of the learned High Court Judge and a Stay Order staying the operation of the said Order. Further the Petitioner has sought an interim order staying further proceedings in the said case until hearing and final determination of this application.

When the matter was taken up for support on the 15<sup>th</sup> and 29<sup>th</sup> of June 2015, the Respondent objected to issuing an interim order staying further proceedings in the Case No. 15/2014 High Court of Galle. Having heard the submissions of the parties, they agreed to file written submissions to support their respective positions.

The facts that have given rise to the instant application are as follows:

The Petitioner is the Chairman of Akmeemana Pradeshiya Sabha. The 1<sup>st</sup> Respondent is the Chief Minister of Southern Province and also the Minister of Local Government of Provincial Council. The powers of supervision and the administration of the local authorities within the province had been given to the Minister in charge of Local Government of the Province. Accordingly, the aforesaid power had been vested with the

1<sup>st</sup> Respondent in respect of the local authorities within the Southern Province as the Minister in charge.

The Respondent being a citizen of the country, addressing the 1<sup>st</sup> Respondent a letter dated 06.05.2015 had been sent (at Page 165 of brief marked as X 15 before the High Court) requesting an inquiry against the Petitioner regarding misappropriations of public properties and funds of the 7<sup>th</sup> Respondent Pradeshiya Sabha. The 1<sup>st</sup> Respondent had not taken any steps to hold an inquiry upon the allegations made by the Respondent against the Petitioner.

Thereafter, the Respondent filed the Writ application before the High Court of Galle seeking a Writ of Mandamus, directing the 1<sup>st</sup> Respondent to commence an inquiry against the Petitioner and suspend him from functioning as the Chairman of the Akmeemana Pradeshiya Sabha during the inquiry. An interim relief also had been sought by the Respondent, restraining the Petitioner from functioning as the Chairman of Akmeemana Pradeshiya Sabha, until the final conclusion of the Writ Application. The learned High Court Judge granted the interim relief as prayed for by the Respondent. Aggrieved by the said Order the Petitioner filed this revision application.

At this stage, this Court is only considering the issue of an interim order, as prayed for in the Petition. It is settled law that a Stay Order is an incidental measure pending disposal of the main matter before the Court. In *Billimoria vs. Minister of Lands and Land Development and Mahaweli Development and two others*, (1978 – 1979 – 1980) 1 SLR 11, the Supreme Court observed that the Court had to decide whether Writ could issue or not,

and this could not be decided without notice being first issued on the Respondents affording them an opportunity of being heard. All this would have taken considerable time. In the interest of justice, therefore, require that a Stay Order be made as an interim measure. It would not be correct to judge such orders in the same strict manner as a final order. The interim orders, by their very nature, must depend a great deal on a judge's opinion as to the necessity for interim action.

In *Duwaratchi and another vs. Vincent and others* (1984 2 SLR 94), the Court laid down the principles on which an interim order could be issued. It held, an interim stay order in a writ application is an incidental order made in the exercise of the inherent or implied power of the Court. The Court should be guided by the following principles:

1. Will a final order be rendered nugatory if the Petitioner is successful?
2. Where does the balance of convenience lie?
3. Will irreparable or irremediable mischief or injury be caused to either party?

The rationale of the judgment in *Biliomoria vs Minister of Lands and Land Development and Mahaweli Development and two others*, (1978 – 1979 – 1980) 1 SLR 11, and *Duwaratchi and another vs. Vincent and others* (1984) 2 SLR 94, is that in considering the question of interim order the Court must bear in mind that an interim order is made in the exercise of inherent or implied power of Court, in circumstances where the final order is, if the Petitioner is successful, be rendered nugatory and the aggrieved party will be left holding a decree worthless for all purposes.



In the light of the above principle, having considered the submissions made by both parties, this Court issues an interim relief staying further proceedings until hearing and final determination of this application as prayed for in Paragraph (4) of the prayer in the Petition.

**JUDGE OF THE COURT OF APPEAL**

P.R. Walgama, J.

I agree

**JUDGE OF THE COURT OF APPEAL**