

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

In the matter of Revision in terms of  
Article 138 of the Constitution

**Case No: CA(PHC) APN 180/2017**  
HC Colombo Case No. HCWA 15/2015

1. K. Nihal Abeysiri Koralage  
No. 230, Habarakada Homagama.
2. H. Wasantha Indika Matarage  
No. 115, Pitipana North Homagama.
3. G.M. Upul Lakshman  
No. 273/1, Meegasmulla Road, Panagoda.
4. S. Dayantha P. Kumara  
No. 46/1, Ambalangoda Polgasowita.

**PETITIONERS**

Vs.

1. Homagama Multi Purposes Co-  
operative Society,  
No. 57, Highlevel Road, Homagama.
2. B.N. Damminda Kumara  
Commissioner of Co-operative  
Development and Registrar of Co-  
operative Societies,  
Department of Western Provincial  
Cooperative Development,  
P.O.Box 444, Duke Street, Colombo 01.

3. P.M.D.B. Hewawasan  
Divisional Officer of Co-operative  
Development  
Co-operative Development Assistant  
Commissioner's Office  
No. 72,  
Mahameghawatte, Maharagama.

4. K.D.L. Neil  
Headquarters Inspector

5. C.R. Abeyrathne  
Co-operative Development Officer.

6. H.W.A. Rohan  
Co-operative Development Officer.

4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents are of  
Department of Western Provincial  
Cooperative Development, P.O. Box  
444, Duke Street, Colombo 01.

7. Dharmasena K. Liyanage  
"Dhananjaya", Siyambalagoda,  
Polgasowita.

8. Gamage Don Milton Gunarathne  
No. 254/1, Horagala West, Padukka.

9. Edirisinhage Wimal Edirisinghe.  
No. 164/3, Panaluwa, Wataraka, Padukka.

### **RESPONDENTS**

**AND NOW BETWEEN**

1. K. Nihal Abeysiri Koralage  
No. 230, Habarakada Homagama.
2. H. Wasantha Indika Matarage  
No. 115, Pitipana North Homagama.
3. G.M. Upul Lakshman  
No. 273/1, Meegasmulla Road, Panagoda.
4. S. Dayantha P. Kumara  
No. 46/1, Ambalangoda Polgasowita.

**PETITIONERS-APPELLANTS**

Vs.

1. Homagama Multi Purposes Co-operative Society  
No. 57, Highlevel Road, Homagama.
2. B.N. Damminda Kumara  
Former Commissioner of Co-operative Development and Registrar of Co-operative Societies, Department of Western Provincial Cooperative Development,  
P.O.Box 444, Duke Street, Colombo 01.
- 2(a) P.A.A.S. Weerasekera  
Commissioner of Co-operative Development and Registrar of Co-operative Societies, Department of Western Provincial Cooperative Development,  
P.O.Box 444, Duke Street, Colombo 01.

3. P.M.D.B. Hewawasan  
Divisional Officer of Co-operative  
Development  
Co-operative Development Assistant  
Commissioner's Office  
No. 72, Mahamegha Watta, Maharagama.
  
4. K.D.L. Neil  
Headquarters Inspector  
Department of Western Provincial  
Co-operative Development P.O. Box  
444, Duke Street, Colombo 01.
  
- 4(a) K. Sumith Premawansa  
No. 38,/1, Atygala, Hanwella.
  
5. C.R. Abeyrathne  
Co-operative Development Officer  
Department of Western Provincial  
Co-operative Development,  
P.O. Box 444, Duke Street, Colombo 01.
  
- 5(a) A.R. Saman Manjula  
No. 90/10/B, Godagamawatta,  
Godagama, Homagama.
  
6. H.W.A. Rohan  
Co-operative Development Officer  
Department of Western Provincial  
Co-operative Development  
P.O. Box 444, Duke Street, Colombo 01.

- 6(a) C.Hettiarachchi  
No. 90/10/B Godagamawatta,  
Godagama, Homagama.
7. Dharmasena K. Liyanage  
“Dhananjaya”, Siyambalagoda,  
Polgasowita.
8. Gamage Don Milton Gunarathne  
No. 254/1, Horagala West, Padukka.
9. Edirisinhage Wimal Edrisinghe  
No. 164/3, Panaluwa, Wataraka,

**RESPONDENTS - RESPONDENTS**

**Before: P. Padman Surasena J/ President, Court of Appeal  
Arjuna Obeyesekere J**

**Counsel:** Uditha Egalahewa, PC with Ranga Dayananda for the Petitioners

Amila Kumara for the 1<sup>st</sup> Respondent

Sobhitha Rajakaruna, Senior Deputy Solicitor General with Ms.  
Tashya Gajanayake, State Counsel for the 2<sup>nd</sup> - 6<sup>th</sup> Respondents

Sanjeeva Dassanayake for the 7<sup>th</sup> - 9<sup>th</sup> Respondents

**Supported on:** 31<sup>st</sup> May 2018

**Decided on:** 28<sup>th</sup> June 2018

**Arjuna Obeyesekere, J**

The Petitioners have filed this application seeking to revise the Judgment of the learned Provincial High Court Judge of the Western Province holden at Colombo delivered on 20<sup>th</sup> October 2017.

The facts of this matter briefly are as follows. The Petitioners and the 7<sup>th</sup> – 9<sup>th</sup> Respondents were directors of the 1<sup>st</sup> Respondent Homagama Multi Purpose Co-operative Society. The 2<sup>nd</sup> Respondent Commissioner of Co-operative Development and Registrar of Co-operative Societies, acting in terms of the powers vested in him by Section 48 of the Co-operative Societies Statute of the Western Province had appointed two Co-operative Development Officers to conduct an inquiry into the affairs of the 1<sup>st</sup> Respondent. Acting on the interim report submitted by the Inquiry Officers, the 2<sup>nd</sup> Respondent had initially suspended the membership of the Petitioners in the 1<sup>st</sup> Respondent and served them with charge sheets. Not being satisfied by the explanations submitted by the Petitioners to the charge sheets, the matter had been referred to the Review Board, which had found the Petitioners guilty of the charges leveled against them. Acting on the report of the Review Board, the 2<sup>nd</sup> Respondent had removed the Petitioners from the Board of Directors of the 1<sup>st</sup> Respondent and prohibited the Petitioners from holding any office in the 1<sup>st</sup> Respondent or any other co-operative society for seven years.<sup>1</sup>

The Petitioners filed Writ application No. HCW 15/2015 in the Provincial High Court of the Western Province holden at Colombo seeking to quash '**P17**'.

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<sup>1</sup> The letters by which the Petitioners had been removed as directors of the 1st Respondent have been annexed to the petition marked 'P17', 'P17a', 'P17b' and 'P17c'.

**'P17a'**, **'P17b'** and **'P17c'**, the letters by which the Petitioners had been removed as directors. Pursuant to the oral and written submissions of the Petitioners and the 2<sup>nd</sup> Respondent, the learned High Court, by his judgment delivered on 20<sup>th</sup> October 2017 had refused to issue the writs of certiorari prayed for and dismissed the application. The Petitioners state that they have filed an appeal against the said judgment in this Court. In addition to the appeal, this revision application has been filed by the Petitioners, seeking, among others, to revise the said judgment and to obtain an interim order staying the operation of the said judgment.

It has been consistently held by this Court that the revisionary power of this Court is a discretionary power and its exercise cannot be demanded as of right unlike the statutory remedy of appeal.<sup>2</sup> In **Don Chandra Maximan Elangakoon vs Officer-In-Charge, Police Station, Eppawala**<sup>3</sup> 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.

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<sup>2</sup> See Don Chandra Maximan Elangakoon vs Officer in Charge, Police Station, Eppawela. CA(PHC) APN 99/2006 CA Minutes of 4<sup>th</sup> October 2007

<sup>3</sup> Ibid

- (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.

As the Petitioners have exercised their right of appeal, it is their obligation to satisfy this Court that there exist exceptional circumstances that warrant the intervention of this Court and that a failure of justice would occur unless the revisionary powers of this Court are exercised.

When this matter was supported for notice, the learned President's Counsel appearing for the Petitioners drew the attention of this Court to paragraph 10 of the petition, which sets out the exceptional circumstances relied on by the Petitioners.

The learned President's Counsel submitted that this revision application has been filed primarily to obtain an order staying the operation of the High Court judgment, as the hearing of the appeal would take time. He submitted that by



**'P17', 'P17a', 'P17b'** and **'P17c'**, the Petitioners have been prohibited from being elected to any office in the 1<sup>st</sup> Respondent or any other Co-operative Society for seven years and that the Petitioners would be prevented from contesting any post, until the appeal is concluded, thereby affecting their rights.

This Court observes that due procedure has been followed by the 2<sup>nd</sup> Respondent with regard to the initial suspension of the Petitioners and their subsequent removal from office. The prohibition from holding office for a period of seven years is by operation of law and is a necessary consequence of such removal, as set out in Section 48(1)(b) of the Statute<sup>4</sup>. In these circumstances, this Court is of the view that the said prohibition preventing the Petitioners from contesting any election to the 1<sup>st</sup> Respondent or to any other Co-operative Society cannot be categorized as an exceptional circumstance that merits the intervention of this Court.

This Court is also of the view that delay in an appeal being heard is not an exceptional reason as to why this Court should exercise its revisionary jurisdiction. In this regard, in **Kulatilleke vs Attorney General**<sup>5</sup> this Court has held as follows:

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<sup>4</sup> Section 48(1)(b) of the Co-operative Societies Statute No. 3 of 1998 of the Western Province reads as follows: "ඉහත 48(අ)(i) අනුඡේදය යටතේ විසුරුවා හරිනු ලබන කාරක සභාවේ සාමාජිකයින්ට හා ධුරවලින් ඉවත් කරනු ලැබූ කාරක සභිකයින්ට එසේ විසුරුවා හරිනු ලැබූ හෝ ඉවත් කරනු ලැබූ දින සිට වසර හතක (7) ක කාලයක් ඉකුත් වන තෙක් නැවත වරක් එකී සමිතියේ හෝ වෙනත් ලියාපදිංචි සමුපකාර සමිතියක ධුරයකට තේරී පත්වීමකට හිමිකමක් නොතිබිය යුතුය. නැතහොත් එසේ තේරී පත්වීම තිත්නනුකූල නොවිය යුතුය."

<sup>5</sup> 2010 1 Sri LR 212

“The delay in deciding the appeal would not amount to an exceptional ground. The appeals filed in this Court are being heard according to a manner that had been decided upon after due consideration. Delay in hearing appeals, would not be a ground to take up an appeal filed subsequently to the appeals that are being heard, unless proper papers are filed to accelerate the same. Furthermore, such an attitude may lead to file revision applications by aggrieved parties without pursuing the appeal filed, causing difficulties to the due administration in the court house.”

In any event, the Petitioners have not even attempted to have the hearing of the appeal accelerated.

The other grounds urged as exceptional circumstances relate to the failure of the High Court to consider the material placed before it and the learned High Court Judge misdirecting himself on the facts and the law. The petition does not specify in detail the matters on which the learned High Court Judge has misdirected himself and if so, its impact on the final outcome. This court has examined the judgment of the learned High Court Judge and find that the matters addressed by the Petitioner and the 2<sup>nd</sup> Respondent have been taken into consideration by the learned High Court Judge. The attention of this Court has not been drawn to any finding of the learned High Court Judge which is so illegal or so shocking that the judgment cannot be permitted to stand and must be revised.

In **Gamage vs Konadeniya Gedara Heen Mahaththaya**<sup>6</sup>, this Court has held

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<sup>6</sup> CA(PHC)APN 71/2017 - CA Minutes of 18<sup>th</sup> May 2018

as follows:

“Since there is an appeal, pending before this Court it is open for the parties to have their rights adjudicated by this Court in that appeal. When there is a right of appeal provided for by law, an applicant in a revision application must show the existence of exceptional circumstances for any intervention by a revisionary Court. This Court cannot accept the grounds urged in the petition as exceptional circumstances as they are mere grounds of appeal upon which the petition of appeal may have been lodged.”

This Court is of the view that the matters urged by the Petitioners as being errors committed by the learned High Court Judge are matters that this Court can consider when called upon to do so in the appeal filed by the Petitioners.

In the above circumstances, this Court is of the view that the Petitioners have failed to adduce any exceptional circumstances that warrant this Court exercising its revisionary jurisdiction. Therefore, this Court refuses to issue notice. The application is dismissed, without costs.

Judge of the Court of Appeal

**P. Padman Surasena J/ President, Court of Appeal**

I agree.

**President, Court of Appeal**