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

In the matter of an appeal to the Supreme Court of the Democratic Socialist Republic of Sri Lanka.

SC. Appeal No. 85/2011

SC. (Spl)LA. No. 30/2011
CA(Writ) No. 928/08

Sarath Dharma Siri Bandara,
No. 86, Hewaheta Road, Galaha.

Petitioner

Vs.

1. Sarath Ekanayake,
   Chief Minister and the Minister in Charge of the Local Authorities-Central Province,
   No. 126, Secretarial Office,
   Kandy.

2. Pradeshiya Sabha Pathahewaheta,
   Thalathu Oya.

3. Abubakar Mohomadu Subuhan,
   Acting Chairman,
   Pradeshiya Sabha Pathahewaheta,
   Thalathu Oya.

4. Election Officer- Pathahewaheta,
   Election Office, Kandy.

5. Gamini S. Wathegedara,
   Inquiring Officer,
   No. 4, 3rd Lane, Right Circular Road,
   Kurunegala.

Respondents

And Now Between

SC. Appeal 85/2011

Sarath Ekanayake,
Chief Minister and the Minister in Charge of the Local Authorities-Central Province,
No. 126, Secretarial Office,
Kandy.

Respondent-Petitioner

Vs.

Sarath Dharma Siri Bandara,
No. 86, Hewaheta Road, Galaha.

Petitioner-Respondent

1. Pradeshiya Sabha Pathahewaheta,
   Thalathu Oya.

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   Acting Chairman,
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   Inquiring Officer,
   No. 4, 3rd Lane, Right Circular Road,
   Kurunegala.

Respondent-Respondents.

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SC. Appeal 85/2011

Before : **Saleem Marsoof, PC. J.**
Chandra Ekanayake, J. &
Eva Wanasundera, PC.J.

Counsel : Nerin Pulle, DSG. With Ms. Yuresha de Silva, SSC. for the Respondent- Petitioner.

Chula Bandara with S.L. Samarakoon for Respondents.

Argued On : **03-07-2014**

Decided On : **10-09-2014**

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Eva Wanasundera, PC.J.

In this application for Special Leave to Appeal, on 28.06.2011 this Court granted special leave on the questions of law set out in paragraph 19 (a, b, c, d and e) of the Petition dated 25.02.2011. The said questions are as follows:-

(a) Did the Court of Appeal err in law in holding that an inquiry that is held in terms of Section 185(2) of the Pradeshiya Sabha Act (as amended) should be concluded within a period of 3 months?

(b) Did the Court of Appeal err in law in holding that the duration of the inquiry as stipulated in Section 185(2) of the Act cannot be extended?

(c) Did the Court of Appeal err in law in holding that Section 185(2) of the Pradeshiya Sabha Act (as amended) is mandatory in nature?

(d) Did the Court of Appeal err in law in holding that the extensions of time given beyond the period stipulated in Section 185(2) of the Pradeshiya Sabha Act was ultra vires?

(e) Did the Court of Appeal err in law in holding that the report submitted by the Inquiring Officer was ultra vires and illegal in view of the extensions of time granted to the Inquiring Officer?

The Court of Appeal judgment from which special leave was granted is marked X3 dated 18.01.2011. By the said judgment the Court of Appeal issued a Writ of Certiorari to quash the order of the Chief Minister and the Minister in Charge of the Local Authorities, Central Province published in the Gazette notification dated 17.10.2008. The said order of the Minister was made in terms of Section 185(1) (a) of the Pradeshiya Sabha Act No. 15 of 1987 whereby the Petitioner-Respondent(hereinafter referred to as the "Respondent") was suspended from holding the office as Chairman of the Pathahewaheta Pradeshiya Sabha in terms of Section 185(3) of the Pradeshiya Sabha Act No. 15 of 1987. He was subject to an inquiry held under Section 185(2) of the said Act which reads:-

> "The Minister shall before making an order under Sub Section (1), appoint, for the purpose of satisfying himself in regard to any of the matters referred to in sub section (1), a retired judicial Officer to inquire into and report upon such matter within a period of three months, and such Officer shall in relation to such inquiry have the powers of a Commission of Inquiry appointed under the Commissioner of Inquiry Act"

The Court of Appeal quashed the Order of the Minister on the basis that (a) the Inquiring Officer was given four extensions to conclude the inquiry even though the aforementioned Section 185(2) specifically states that it should be concluded within three months which is mandatory and therefore the report submitted by the Inquiring Officer is illegal and ultra-vires; (b) the Minister has acted on this illegal report and removed the Chairman of the Pradeshiya Sabha for mismanagement and incompetency; and (c) the Minister's decision to remove the Chairman is illegal and therefore should be quashed.

The question to be determined is whether Section 185(2) stipulates that the Inquiring Officer should conclude the inquiry within three months. Section 185(1) states that if the Minister is satisfied at any time that there is sufficient proof of incompetence and management, he may remove the Chairman from Office. Under Section 185(2) he

appoints the Inquiring Officer to get a report to satisfy himself regarding incompetence and management. When he appoints such Officer, the Minister may suspend the Chairman and when he receives the report he can either remove the Chairman or revoke the suspension. As such the report of the Inquiring Officer is necessary for the Minister to satisfy himself regarding the decision. The Officer once appointed by the Minister acquires the powers of a Commission of Inquiry appointed under the Commission of Inquiry Act No 17 of 1948 as amended.

In interpreting the provisions of a statute, one must ascertain the intention of the Legislature. It is trite law that "it is necessary to know the intent of the legislature that make it, in order to construe the meaning". As per N.S. Bindra's Interpretation of Statutes – 9th Edition; "It is elementary that the primary duty of a Court is to give effect to the intention of the legislature as expressed in the words used by it and no outside consideration can be called in aid to find that intention. A statute must be construed in a manner which carries out the intention of the legislature. The intention of the legislature must be gathered from the words of the statute itself. If the words are unambiguous or plain, they will indicate the intention with which the statute was passed and the object to be obtained by it. When the language of the law admits of no ambiguity and it is very clear, it is open to the Courts to **put their own gloss** in order to squeeze out some meaning which is not borne out by the language of the law".

In the instant case, the intention of the legislature in having introduced Section 185(2) seems to be, to provide a mechanism to ensure good governance. It enables the Chief Minister to act in a transparent manner when he decides to remove the Chairman, as in this case. At any time that he is dissatisfied with the Chairman's actions regarding competence and management, he cannot remove the Chairman on his own. Instead he has to appoint an Inquiring Officer out of the retired Judicial Officers who are well versed with such inquiries, to hold an inquiry and report before he takes a step to remove the Chairman. In the plain reading of Section 185(2), the appointment of the Officer and the reporting should be done within 3 months.

The purpose of such a report is to decide on the removal, i.e. whether to remove or not. What could happen, if the Inquiring Officer cannot conclude the inquiry within

that period? If the report is not considered due to the fact that it is submitted after 3 months to the Minister, on a strict interpretation of the Section, taking the words as mandatory, the Minister can reject the report and act on his own ignoring the report, on one hand. On the other hand, he can accept the report, go through the material and then decide on the matter. Which would the Legislature have intended? Is it the rejection of the report or consideration of the report? Then again, the parties to the inquiry can purposely delay the proceedings of the inquiry by all kinds of methods, so that the end result would be, for the report to reach the Minister after 3 months. Was that the intention of the Legislature?

In the instant case, neither of the situations discussed above arose. Both parties to the inquiry never complained when the Inquiring Officer asked for extensions, four times after the expiry of three months from the date of the appointment. They conveniently participated at the inquiry without objecting to the extensions. They have acquiesced in the proceedings. How could they have complained about the inquiry going beyond three months, as illegal and ultra vires? The facts in this case amply show that the person appointed by the Respondent to defend the Respondent at the inquiry had requested the Inquiring Officer to hold the inquiry only once a week as he was unable to come for the inquiry otherwise and on that account the extensions of time were granted to facilitate the conclusion of the said inquiry.

In the case of ***Nagalingam Vs. Lakshman de Mel, Commissioner of Labour 78 NLR 237***, it was observed that "Further the Petitioner, having participated in the proceedings without any objection and having taken the chance of the final outcome of the proceedings, is precluded from raising any objection to the jurisdiction of the Commissioner of Labour to make a valid order after the zero hour. The jurisdictional defeat, if any has been cured by the Petitioner's consent and acquiescence". The subject matter of that case was the time stipulated in Section 2(2) (c) of the Termination of Employment of Workman (Special Provisions) Act No. 45 of 1971. It was observed in that case, again, that "It could not have been intended that the delay should cause a loss of jurisdiction that the Commissioner had, to give an effective order of approval or refusal. A failure to comply literally with the said provision does not affect the efficacy or finality of the Commissioner's order made thereunder'.

The determination of the question whether a provision of law is mandatory or directory would depend upon the intent of the law maker. The intent of the law maker should not be gathered only from the phraseology of the provisions but by considering the consequence which would follow from construing it in one way or the other.

Section 185(2) of the Pradeshiya Sabha Act facilitates the Minister to make a decision. If the facilitator, who was the Inquiring Officer in this case delays the report, there is nothing that the Minister can do other than making the decision when the report is submitted. Of course, the Minister can try to get it fast by making a request to the Inquiring Officer but when the affected parties are also acquiescing in the process of the delay due to whatever reasons, then, the Minister has to consider the report only when it is submitted. This is exactly what has happened in this case. The Minister has given the time extensions as requested and then considered the report submitted thereafter. Such action of the Minister is not ultra-vires or illegal.

I note that in ***Mohamed Ishak Vs. Morais 1996, 1 SLR 145*** , the Court of Appeal has observed that "Section 185 of Act No. 15 of 1987 is directory and not mandatory and therefore the inquirer is not bound to deliver the order within 3 months". In ***Mohamed Vs. H Jayaratne 2002, 3 SLR 169*** and ***others*** also, in similar circumstances, the Court of Appeal has held that "the time limit of two months set out in the proviso to Section 63(1) of the Provincial Councils Act is directory and not mandatory".

I further observe that the Court of Appeal in the instant case has dismissed the submission of the Petitioner in the case before the Court of Appeal, namely that "there is no basis for the decision of the Inquiring Officer". The Court of Appeal Judge has thus accepted that there is good reasoning and a good basis for the decision of the Inquiring Officer. While accepting the report he has wrongly decided that it was illegal and ultra-vires solely on the basis that the decision of the Inquiring Officer was made after the lapse of three months. In other words the Court of Appeal has accepted that the Minister had made a decision on the merits of the case produced by the Inquiring Officer and that decision taken alone is legal and not ultra-vires. The Court of Appeal has quashed the Minister's decision only on the ground that the Minister's granting of extensions were ultra vires the powers of the Minister

and therefore the report submitted by the Inquiring Officer after 3 months, which is the mandatory period, is ultra vires and illegal.

I am of the opinion that any interpretation of Section 185(2) of the Pradeshiya Sabha Act No15 of 1987 on the basis that the time period of 3 months is mandatory, would defeat the intention of the legislator who intended to ensure good governance based on a transparent system.

I set aside the judgment of the Court of Appeal delivered on 18.01.2011. I dismiss the Writ application bearing No. CA. (Writ) 928/2008 in the Court of Appeal. I order costs fixed at Rs.50,000/- payable by the Petitioner-Respondent to the Respondent-Petitioner, the Chief Minister and Minister in Charge of the Local Authorities, Central Province.

I allow the appeal subject to the costs as aforementioned.

Judge of the Supreme Court

Saleem Marsoof, PC. J.

I agree.

Judge of the Supreme Court

Chandra Ekanayake, J.

I agree.

Judge of the Supreme Court