

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

In the matter of an application for Leave
to Appeal under Section 82Y of the Local
Authorities Election Ordinance.

Wickramaarachchilage Gamini
Jayasekara,
Candidate of Sri Lanka People's Front,
Konwewa Para,
Kahatagasdigiliya.

Petitioner

S.C. Appeal No. 30/2020

S.C. (H.C.C.A.) L.A. No. 454/19

**H.C. Anuradhapura Case No. Election
Petition 01/2018**

Vs.

1. Jinapalage Thilakaratne,
Candidate – Independent Group 01,
Gam – Maddha,
Kahatagasdigiliya.
2. Babasinghe Baddegamage Dayapala,
Candidate – United National Party,
Kiralagala Para,
Kahatagasdigiliya.
3. Arampola Mudiyanseelage Wasantha
Arampola,
Candidate – Sri Lanka Freedom Party,
Gam – Maddha,
Kahatagasdigiliya.
4. Suraweera Susil Jayalath,
Candidate – People's Liberation Front,
No. 29, Siwdiyagama,
Kahatagasdigiliya.

5. Aahamed Mawalana Asseyyadu
Mohomad Ali,
Candidate – Sri Lanka Muslim Congress,
Kiralagama Para,
Kahatagasdigiliya.
6. Lakshan Sampath Shanthage,
Candidate – Independent Group 02,
Thihogama,
Upuldeniya.
7. Muheyadeen Bawa Muhammadu
Supiyan,
Assistant Returning Officer,
Kahatagasdigiliya Pradeshiya Saba,
Election Office,
Anuadhapura.
8. R. M. Wanninayake,
Returning Officer,
Anuradhapura District,
Election Office,
Anuradhapura.

Respondents

AND NOW BETWEEN

7. Muheyadeen Bawa Muhammadu
Supiyan,
Assistant Returning Officer,
Kahatagasdigiliya Pradeshiya Saba,
Election Office,
Anuadhapura.

7th Respondent – Appellant

8. R. M. Wanninayake,
Returning Officer,
Anuradhapura District,
Election Office,
Anuradhapura.

8th Respondent – Appellant

Vs.

Wickramaarachchilage Gamini
Jayasekara,
Candidate of Sri Lanka People's Front,
Konwewa Para,
Kahatagasdigiliya.

Petitioner – Respondent

1. Jinapalage Thilakaratne,
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Kahatagasdigiliya.
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Thihogama,
Upuldeniya.

Respondents – Respondents

Before: Hon. Murdu N. B. Fernando, P.C., C.J.

Hon. Janak De Silva, J.

Hon. K. Priyantha Fernando, J.

Counsels: Viraj Dayaratne, P.C., ASG with Yuresha de Silva, DSG for 7th and 8th
Respondent Appellants

Respondents are unrepresented

Written Submissions:

23.06.2020 and 19.09.2023 by 7th and 8th Respondent Appellants

Argued on: 13.06.2023

Decided on: 16.05.2025

Janak De Silva, J.

This is an appeal arising out of an election petition filed by the Petitioner-Respondent (Petitioner) in terms of the Local Authorities Elections Ordinance as amended (Ordinance).

The Petitioner contested as a candidate of the Sri Lanka Podujana Peramuna (SLPP) at the Local Authorities Elections held on 10.02.2018 from Ward No. 06 of the *Kahatagasdigiliya* Pradeshiya Sabha.

According to the results declared, the 1st Respondent-Respondent (1st Respondent) who contested from Independent Group No. 01 received 626 votes whereas the Petitioner received 625 votes. Hence, the 1st Respondent was declared elected to Ward No. 06 by a majority of 01 vote.

The Petitioner then filed this election petition in the Provincial High Court of North Central Province holden in Anuradhapura. The Petitioner alleged that:

- (i) Ward No. 06 is made of two voting stations, namely 6(a) and 6(b);
- (ii) Out of a total of 1227 votes cast at voting station 6(a), only 1226 votes have been counted;
- (iii) The counting officers have rejected a substantial number of postal votes citing that the packaging of the postal votes is not in order;
- (iv) As 07 Wards out of 10 Wards comprising the *Kahatagasdigiliya* Pradeshiya Sabha was won by the SLPP there is ground to believe that Ward No. 06 should have also been won by the SLPP.

When the trial of the election petition commenced, the 7th and 8th Respondent-Appellants (Appellants) raised the following preliminary objections:

- (i) The petition has been filed out of time.
- (ii) The relief sought by the Petitioner is outside Section 82S of the Ordinance.
- (iii) The petition is vexatious.

The learned Election Judge overruled all three preliminary objections. The Appellants appealed. Leave to appeal has been granted on the following questions of law:

- (1) Whether the learned Election Judge erred in law by failing to recognise that the petition does not fulfil the ground set out in Section 82P(2) of the Ordinance?
- (2) Whether the Election Judge erred in law by failing to consider statutory provisions for recounting in terms of Section 63(7) and 63(8) of the Ordinance?

Question of Law No. 1

The Petitioner has in his petition prayed for the following relief:

- a) Notice on the Respondents;
- b) To direct the 7th and 8th Respondents to issue the election results and the postal vote results cast in *Kahatagasdigiliya* Pradeshiya Sabha Ward No.6 to the Petitioner-Respondent;
- c) To direct the 7th and 8th Respondents to recount the election results and the postal vote results cast in *Kahatagasdigiliya* Pradeshiya Sabha Ward No.6;
- d) To declare that the 1st Respondent-Respondent has not been duly elected to the *Kahatagasdigiliya* Pradeshiya Sabha after a recount of votes;
- e) To declare that the Petitioner-Respondent is duly elected to the *Kahatagasdigiliya* Pradeshiya Sabha after a recount of votes;
- f) Costs;
- g) Such other relief as considered appropriate by Court.

The Appellants contend that the relief claimed by the Petitioner is not in conformity with Section 82(2) of the Ordinance. In particular, it is submitted that the relief sought by the Petitioner is not to have '*the election in respect of any ward of an electoral area declared*

void’ as provided for under Section 82S(a) but to have ‘*the election of a candidate as a member of any local authority declared void*’ as provided for under Section 82P(2).

Therefore the Appellants submitted that the grounds that can be relied upon by the Petitioner will necessarily have to be one or more of the grounds spelt out in Section 82P(2)(a)–(d). According to the Appellants, none of these grounds relate to the recount of votes at any counting centre. The provisions contained in Section 82P(1)(b) would not apply in this instance since the Petitioner is not seeking to have the ‘*election in respect of any ward of an electoral area declared void*’.

Let me examine these contentions in the context of Section 82P of the Ordinance.

Section 82P(1) reads as follows:

*“(1) The **election in respect of any ward of any electoral area** shall be declared void on an election petition on the following grounds which may be proved to the satisfaction of the Election Judge, namely—*

*(a) that by reason of **general** bribery, **general** treating or **general** intimidation or other misconduct or other circumstances whether similar to those enumerated before or not a section of electors was prevented from voting for the candidate of any recognised political party or independent group which it preferred and there by **materially affected the result of the election**;*

*(b) **non-compliance with the provisions of this Ordinance relating to elections**, if it appears that **the election** was **not conducted in accordance with the principles laid down in such provisions** and that such **non-compliance materially affected the result of the election**.”*
(emphasis added)

Section 82P(2) reads as follows:

*“(2) The **election of a candidate as a member of any local authority** shall be declared void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, namely-*

*(a) that a corrupt or illegal practice was committed in connection with the election **by the candidate or with his knowledge or consent or by any agent of the candidate,***

*(b) that the **candidate personally engaged** a person as canvasser or agent or to speak on his behalf knowing that such person had within seven years previous to such engagement been found guilty of a corrupt practice under the law relating to the election of the President or the law relating to Referenda or under the Ceylon (Parliament Elections) Order in Council. 1946, or under this Ordinance by a court of competent jurisdiction or by the report of an Election Judge,*

*(c) that the **candidate personally engaged** person as a canvasser or agent or to on his behalf knowing that such had been a person on whom disability had been imposed resolution passed by Parliament of Article 81 of the Constitution period of such civic disability specified in such resolution had not expired,*

*(d) that the **candidate** was at the time of his election a person **disqualified for election as a member.**” (emphasis added)*

Clearly Sections 82P(1) and 82P(2) deals with two different situations. Section 82P(1) specifies the grounds on which the **election in respect of any ward** of any electoral area shall be declared void. On the contrary, Section 82P(2) specifies the grounds on which the **election of a candidate** shall be declared void.

There is a clear rationale for this distinction. Section 82P(1) deals with acts which are general in nature and which materially affect the result of the election. Such acts are not attributable to a particular candidate. On the other hand, Section 82P(2) deals with acts referable to a particular candidate which does not materially affect the result of the election. They impinge only on the election of a particular candidate.

For example, Section 82P(1)(a) covers acts such as **general bribery, treating or intimidation**. The election in respect of any ward of any electoral area shall be declared void if as a result of the alleged acts, a section of electors was prevented from voting for the candidate of any recognised political party or independent group which it preferred and there by *materially affected* the result of the election.

Similarly, Section 82P(1)(b) cover situations where due to the non-compliance with the provisions of the Ordinance relating to elections, it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance *materially affected* the result of the election. Here also the focus is not on the conduct of a particular candidate.

On the other hand, where Section 82P(2) is engaged, there is no need for the impugned conduct to have materially affected the result of the election. Where any one or more of the circumstances set out in Sections 82P(2)(a)-(d) are established, the election of the said candidate as a member of any local authority must be declared void irrespective of whether the impugned conduct materially affected the result of the election in respect of a ward of any electoral area.

The core complaint of the Petitioner is that the public officials entrusted with the task of counting the votes cast failed to do it accurately. In this context, it is important to ascertain what is meant by the words *the election was not conducted in accordance with the principles laid down in the provisions of the Ordinance* in Section 82P(1)(b).

The Ordinance was enacted in 1946 and provided the system of elections in respect of all local authorities that had been established before the grant of independence. The Ordinance provided a simple electoral process for all local authorities based on what was commonly known as the "ward system". The area of each local authority was divided into smaller units known as *wards* and the election was in respect of each such *ward*. The winner of each *ward* of a local authority was selected on the first past the post system.

By Law No. 24 of 1977, this system was done away with and replaced by a system in which the entire local authority became one electoral area. The election was conducted on a proportional representation system.

From the inception, the Ordinance did not provide for the filing of election petitions to impugn the results of local authorities elections. The only provision which provided for impugning the election was Section 69 of the Ordinance which reads as follows:

"No election shall be invalid by reason of any failure to comply with the provisions of the Ordinance relating to elections if it appears that the election was conducted in accordance with the principles laid down in such provisions, and that such failure did not affect result of the election."

In ***Perera v. Madadombe* (73 NLR 25 at 28)**, H.N.G. Fernando, C.J., held that although Section 69 does not positively declare that an election will be invalid for any specified reason, he can assume that such a declaration is implied in this section. He went on to hold that on this assumption the declaration thus implied may properly be stated as follows :-

"If there is in the case of any election a failure to comply with any of the provisions of this Ordinance relating to elections, and if it appears that the election was not conducted in accordance with the principles laid down in such provisions, and if it

appears that thereby the result of the election was affected, the election. shall be invalid."

This was the provision that litigants resorted to through administrative law remedies to try and impugn local authority elections. On the contrary, the Presidential Elections Act No. 15 of 1981, the Parliamentary Elections Act, No. 1 of 1981 and the Provincial Councils Elections Act, No. 2 of 1988, all provide for an election to be annulled according to the procedure laid down in those enactments. It is in this context that Wijetunga, J. in ***Gamini Atukorale v. Dayananda Dissanayake, Commissioner of Elections and Others*** [(1998) 3 Sri LR 206 at 220] opined as follows:

"Therefore, one cannot but conclude that the failure to make such provision in respect of elections to local authorities was deliberate on the part of the Legislature. If that be the case, the time is ripe for this court to draw the attention of the Legislature to the crying need for appropriate provisions to be made for the invalidation of impugned elections under this Ordinance on grounds similar to those contained in the other statutes aforementioned. Otherwise, the concept of a free and fair election and the citizen's right to elect representatives of his choice to the local authority of his area would not merely be a myth, but a farce."

These observations may well have resulted in the legislature enacting Local Authorities Elections (Amendment) Act No. 1 of 2002 which provided for the institution of election petitions to impugn local authority elections by the introduction of Sections 82O to 82AM.

In this context, it is interesting to observe that the wording in Section 82P(1)(b) and Section 69 as interpreted in ***Perera v. Madadombe*** (supra) is substantially the same. In ***Perera*** (supra. at page 29) H.N.G. Fernando, C.J., held that:

"The first condition in the declaration to be implied in s. 69 is that there must be a failure to comply with some provision of the Ordinance. This expression is

appropriate to a case where a public officer does not perform an act or duty which some provision of the Ordinance requires him to perform, because if so the officer clearly fails to comply with that provision.”

In ***Gamini Atukorale* (supra. at 213)**, it was held that non-compliance with the provisions of the Ordinance referred to in Section 69 necessarily envisages the acts of the officers concerned with the conduct of such election.

Statutes in *pari materia* must be interpreted harmoniously. This rule of interpretation extends to similar provisions in the same statute. Moreover, where the legislature enacts a provision which is similar to an existing statutory provision that has already been interpreted by the highest court of the land, it must be presumed that the legislature was aware of such interpretation and enacted a similar provision with that interpretation in mind.

Bindra [Bindra’s Interpretation of Statutes, 10th ed., page 235] states as follows:

“The legislature must be presumed to know the course of legislation, as well as the course of judicial decisions in the country, a fortiori of the superior courts of the country.”

In ***Nilamdeen v. Nanayakkara* (76 NLR 169 at 171)** it was held that it is a well-known rule of construction that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted.

Section 24 of the Ordinance directs that every general election of the members of a local authority shall be held in the manner provided by the Ordinance. Sections 26 to 68 of the Ordinance sets out the procedure to be followed in conducting the election. The election must be conducted in accordance with the principles laid down in these provisions. The relevant principles must be distilled from those provisions.

I therefore hold that that non-compliance with the provisions of the Ordinance referred to in Section 82P(1)(b) implies the failure on the part of the officers conducting the election to conduct of the election in accordance with such principles.

In so far as the conduct of the local authority elections, and in particular the counting of votes is concerned, these principles *include* the following:

- (i) The election must be held in a free and fair manner so as to ensure that the voters can cast their votes freely according to their will.
- (ii) The counting of votes must be conducted in a transparent manner.
- (iii) All validly cast votes must be counted in favour of the recognized political party or independent group in whose favour the vote was cast.
- (iv) All invalid votes must be rejected.
- (v) The final result of a Ward of an electoral area must reflect the true will of the voters.

The core complaint of the Petitioner is that the public officials entrusted with the task of counting the votes cast failed to do it accurately. No allegations have been made against the conduct of the 1st Respondent. Therefore, the core complaint of the Petitioner falls within Section 82P(1)(b) of the Ordinance.

The contention of the Appellants that the relief claimed by the Petitioner is not in conformity with the provisions in Section 82P(2) of the Ordinance is also misconceived in law.

A careful examination of the provisions in Sections 82P(1)(a) and 82P(1)(b) makes it clear that the consequences of the circumstances referred to therein may vary. For example, where there has been general bribery, treating or intimidation the result of the election may be materially tainted so that there is no way to ascertain the true will of the voters

from the votes cast. The election in respect of that Ward of any electoral area will then have to be declared void.

On the other hand, Section 82P(1)(b) may apply to a situation where the voting was conducted in a free and fair manner but the counting of the votes was done contrary to the principles laid down in the applicable provisions. Here, there is no need to declare the whole election void. The aberration in the counting process can be corrected by a fresh count and the result declared to reflect the true will of the voter.

The contention of the Petitioner is that if the votes cast at the aforesaid election was correctly counted, he would have been returned elected to Ward No. 06 and not the 1st Respondent. The Petitioner has sought a declaration that the 1st Respondent has not been duly elected to the *Kahatagasdigiliya* Pradeshiya Sabha after a recount of votes and a declaration that the Petitioner is duly elected to the *Kahatagasdigiliya* Pradeshiya Sabha after a recount of votes. They fall within Section 82S(b) and 82S(c) of the Ordinance. In the circumstances of this appeal, there was no need for the Petitioner to have also prayed for a declaration that the election in respect of ward No. 06 of *Kahatagasdigiliya* local authority electoral area is void. The election was duly conducted but the counting of the votes was not.

I am mindful that Section 82P(1) specifies that election in respect of any ward of any electoral area shall be declared void. Nevertheless, it is an established rule of interpretation that the grant of a greater includes the lessor (*Omne majus continent in se minus*) [See ***The Queen v. A.D. Hemapala* (65 NLR 313 at 322); *M.B. Ibralebbe (alias Rasa Wattan) v. The Queen* (65 NLR 433 at 435); *Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others* (2000) 3 Sri LR 243 at 260, 261; *Government Medical Officers Association and Another v. Senanayake* (2001) 3 Sri LR 377 at 387; *Thavaneethan v. Dayananda Dissanayake, Commissioner of Elections and Others* (2003) 1 Sri LR 74 at 94; *The Superintendent, Stafford Estate and Two Others v.***

Solaimuthu Rasu (2013) 1 Sri LR 25 at 32; Commissioner General of Inland Revenue vs. Janashakthi General Insurance Ltd (2020) 3 Sri LR 259 at 271].

Accordingly, I hold that there will be situations where, even though Section 82P(1) applies, the Election Judge can limit the relief to a recount of votes and a fresh declaration of the results based on such recount. This will enhance the immutable republican principles of representative democracy on which our Constitution is founded and advance the franchise of the people.

However, the Appellants contended that a recount of the votes is not a relief that can be claimed by a petitioner in an election petition. This is also misconceived in law.

Pursuant to Section 67(3) of the Ordinance, the Elections Officer shall retain the packets of ballot papers and all documents forwarded to him in accordance with Section 67(2) for a period of six months reckoned from the date of the receipt thereof and shall thereafter cause the said packets and documents to be destroyed.

According to Section 82AF(1), every election petition under the Ordinance shall be presented within twenty-one days of the date of publication of the results of the election in the Gazette. Therefore, the Election Officer will be put on notice of the filing of an election petition before he becomes entitled to destroy the ballot papers and all documents forwarded to him. He will have to retain the ballot papers and documents until the conclusion of the trial of the election petition.

Moreover, there is clear indication that the Ordinance does provide for a recount of the votes cast consequent to an election petition. Section 82AH(1) provides for the scrutiny and striking off of the vote of any person or persons.

Furthermore, if it is established at the trial of an election petition that the votes for a Ward were not counted in accordance with the principles laid down in the Ordinance and that such non-compliance materially affected the result of the election, the justifiable

course of action will be to declare afresh the results after a count made in accordance with the principles laid down in the Ordinance.

For all the foregoing reasons, question of law No. 01 is answered in the negative.

Question of Law No. 2

The Appellants submitted that Section 63 of Ordinance provides for the counting of votes and Section 63(7) has specific provisions relating recounts. Therefore it was contended that any grievance based on the counting of votes, refusal to order a recount etc. would be a matter that could be agitated by way of a writ application and is not provided for in terms of the Ordinance and cannot form the basis of an election petition instituted in terms of section 82Q of the Ordinance.

I have already made reference to certain provisions in the Ordinance which shows that a recount of the votes at an election petition is in fact envisaged.

Moreover, Section 63 of the Ordinance provides for a limited recount before the final results are declared. The electoral process must be concluded without undue delay by the declaration of the results. Hence the need to restrict the opportunity for a lengthy recount process. Such considerations disappear once it is established at the trial of an election petition that the counting of the votes was not done in accordance with the principles laid down in the Ordinance and that such non-compliance materially affected the result of the election.

I hold that there can be a recount of the votes at the trial of an election petition filed in relation to an election for a local authority provided it is established that the counting of the votes was not done in accordance with the principles laid down in the Ordinance and that such non-compliance materially affected the result of the election.

I answer question of law No. 2 in the negative.

For all the foregoing reasons, the appeal is dismissed. Parties shall bear their costs.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

Murdu N.B. Fernando, P.C., C.J.

I agree.

CHIEF JUSTICE

K. Priyantha Fernando, J.

I agree.

JUDGE OF THE SUPREME COURT