

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

In the matter of an Application in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**SC (FR) Application No. 22/2014**

Kidavidanalage Susantha Gnanaratne,  
No. 20, Batukotuwa, Yoda-Ela.

**PETITIONER**

1. Pradeshiya Sabha of Hingurakgoda,  
Hingurakgoda.
2. G.K.S. Ratnavali,  
Acting Secretary,  
Pradeshia Sabha of Hingurakgoda.
- 2A. H.M. Chandrasekera,  
Secretary,  
Pradeshia Sabha of Hingurakgoda.
- 2B. S.P. Rambukkanage,  
Secretary,  
Pradeshia Sabha of Hingurakgoda.
3. R.M.C.P. Ratnayake,  
Vice Chairman (Former)  
Pradeshia Sabha of Hingurakgoda.
4. W.T.A. Manel
- 4A. W.M. Sudarshana Dissanayake
- 4B. Maheshi Kodippiliarachchi

4<sup>th</sup>, 4A and 4B Respondents are  
Commissioner of Local Government,

Department of Local Government,  
(North Central Province),  
Provincial Council Complex,  
Dharmapala Mawatha, Anuradhapura.

5. I. Hathurusinghe,  
Returning Officer of Hingurakgoda,  
Secretariat of the Commissioner of  
Elections, Polonnaruwa.

6. Commissioner of Elections,  
Secretariat of the Commissioner of  
Elections,  
No. 395, Old Kotte Road,  
Rajagiriya.

6A. Mahinda Deshapriya

6B. Dr. Nalin Abeysekera

6C. Prof. Rathnajeewan Hoole

6A to 6C Respondents are the Chairman and  
members of the National Elections Commission,  
No. 395, Old Kotte Road, Rajagiriya.

7. Hon. Susil Premajyantha,  
Secretary General,  
United People's Freedom Alliance,  
301, T.B. Jaya Mawatha, Colombo 10.

7A. Hon. Mahinda Amaraweera,  
Secretary General,  
United People's Freedom Alliance,  
301, T.B. Jayah Mawatha, Colombo 10.

8. Assistant Commissioner of Local  
Government (Polonnaruwa),  
Secretariat of Commissioner of Local  
Government, Polonnaruwa.

9. D.R. Udawatte
10. D.M.C.K. Meeruppa
11. R.M. Wijesinghe
12. L.P. Navarartne
13. H.B. Bandula Wickremaratne
14. M.B. Jayantha Gunawardene
15. R.M.C.L. Rajakaruna
16. A.P. Somaratne Pathiraja
17. J.M. Piyatissa Banda
18. K.P. Kumarasiri
19. N.A.W. Kumudu Pushpakumara
20. S.M. Jayantha Vipula
21. W.W.M. Janaka
22. L.R. Piyal Saman Kumara
23. T.B. Sarath
24. D.M. Ishara Rathnayake

9<sup>th</sup> to 24<sup>th</sup> Respondents are members of the Pradeshiya Sabha of Hingurakgoda.

25. Hon. Peshala Jayaratne,  
Chief Minister,  
Provincial Council of North Western  
Province, Anuradhapura.
26. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.
27. Dewapriya Ronald Udawaththa,  
Chairman, Pradeshiya Sabha of Hingurakgoda
28. Nawaththe A.W.K.P. Weerasinghe.  
Vice Chairman, Pradeshiya Sabha of Hingurakgoda
29. D.M.C.C. Dissanayake

30. J.A.P. Jayasinghe
31. D.W.M. Chandrasiri
32. R.M.C.L. Rajakaruna
33. W.M. Janaka
34. D.M.D.D. Ishara Rathnayake
35. L. Nawarathna
36. H.G. Gunasiri
37. U.G.G.G.T.Kumara
38. D.J. Daladawaththa
39. K.P.Kumarasiri
40. B.M.G. Ravindra
41. J.M. Piyathissa Bandara
42. G.R.S. Kithsiri Gamlath
43. D.H. Dewayale Chandrasiri
44. P.A. Somarathna
45. D.M.C.K. Weeruppa
46. H.B. Bandula Wickramarathna
47. R. Upul Chaminda
48. R.M.P. Dharshani Ratnayake
49. R.M.S.S. Kumari Jayasekera
50. Punchibandage Chandralatha
51. K.M. Chandani Konarathna
52. K.H.L. Nuwan Kumara
53. M.M.R. Upul Kumara
54. G.A. Dimuth Sanjeewa
55. K.J.A.Y.M. Kekulawala
56. H.M.Mallika Thilakarathna
57. L.W.I. Kumarihami
58. A.G. Jayarathna
59. K.W.S. Udaya Kumara

29<sup>th</sup> to 59<sup>th</sup> Respondents are members of the Pradeshiya Sabha of Hingurakgoda.

## **RESPONDENTS**

**Before:** Arjuna Obeyesekere, J  
Sampath B. Abayakoon, J  
M. Sampath K.B Wijeratne, J

**Counsel:** Senany Dayaratne with Nishadi Wickremasinghe, Janani Abeywickrema and Maheshika Bandara for the Petitioner

Pulasthi Rupasinghe with Zaneta Ragel for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents

Manohara De Silva, PC with Harithriya Kumarage for the 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Respondents

Nayomi Kahawita, Senior State Counsel for the Hon. Attorney General

**Argued on:** 19<sup>th</sup> November 2025

**Written Submissions:** Tendered on behalf of the Petitioner on 20<sup>th</sup> May 2015 and 11<sup>th</sup> February 2026

Tendered on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents on 21<sup>st</sup> January 2026

Tendered on behalf of the 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Respondents on 14<sup>th</sup> February 2026

**Decided on:** 17<sup>th</sup> June 2026

**Obeyesekere, J**

- (1) The Petitioner had been elected as a member of the Pradeshiya Sabha of Hingurakgoda [**the Pradeshiya Sabha**] at the local government elections held in 1997. Having been re-elected at the election that followed in 2002, the Petitioner had been appointed as its Vice Chairman in 2006 and as its Chairman in 2008. At the local government elections held in 2011, the Petitioner had polled the highest number of preferential votes among all candidates who contested for membership in the Pradeshiya Sabha of Hingurakgoda and had been re-appointed as its Chairman.

- (2) The Petitioner filed this application on 22<sup>nd</sup> January 2014 complaining that the notification dated 18<sup>th</sup> January 2014 [P18a] sent by the 4<sup>th</sup> Respondent, the Commissioner of Local Government of the North Central Province to the 2<sup>nd</sup> Respondent, the Secretary, Pradeshiya Sabha of Hingurakgoda that the Petitioner is deemed to have resigned from the office of Chairman of the Pradeshiya Sabha in terms of the proviso to Section 169 of the Pradeshiya Sabha Act, No. 15 of 1987, as amended (**the Act**) owing to his failure to have the annual budget passed by the members of the said Pradeshiya Sabha, and therefore to take steps to fill the post of Chairman arising from such vacancy, is arbitrary, capricious and ultra vires and is therefore violative of his fundamental rights guaranteed by Articles 12(1) and 14(1)(g) of the Constitution.
- (3) While leave to proceed had been granted on 31<sup>st</sup> March 2014 for the alleged violation of the said Articles, this Court had refused to grant interim relief staying the operation of the said notification and any consequential steps arising therefrom. It is admitted that the post of Chairman was subsequently filled by another member.
- (4) The issue that needs to be determined in this application is whether the Petitioner is deemed to have resigned from the office of Chairman of the Pradeshiya Sabha, as notified by P18a.
- (5) I had the opportunity of considering this issue in **H.M. Lalantha Sumith Seneviratne v Pradeshiya Sabhawa of Padiyathalawa and others** [CA (Writ) Application No. 57/2021; CA minutes of 10<sup>th</sup> June 2021] and **A.P. Ranasinghe Bandara v Anuradha Yahampath, Governor of Eastern Province and others** [CA (Writ) Application Nos. 61/2021; CA minutes of 10<sup>th</sup> June 2021]. Those two cases dealt with a Chairman of a Pradeshiya Sabha who had been appointed as the Chairman pursuant to being elected at the local government elections held in 2018, and who had not submitted the Budget to the relevant Pradeshiya Sabha for a vote but instead claimed that since he had agreed with the amendments proposed by the members, the necessity of the budget being voted upon did not arise. In each of the said cases, I took the view that the proviso to Section 169 is mandatory, with the necessary consequence being that the Chairman was deemed to have resigned from his office.

- (6) The learned Counsel for the Petitioner sought to distinguish this application from the above judgments on two grounds. The first was that the factual circumstances that led to P18a are different, in that in this application the Budget was in fact submitted to the members of the Pradeshiya Sabha for a vote. The second was that the proviso to Section 169 by which a Chairman of a Pradeshiya Sabha is deemed to have resigned from his office due to his inability to have the budget approved by its members was introduced only in 2012 by the Local Authorities (Special Provisions) Act, No. 21 of 2012, by which time the Petitioner had already been elected as a member and appointed as the Chairman of the Pradeshiya Sabha. While the learned Counsel for the Petitioner is factually correct on both grounds, I shall now proceed to consider the applicability of the provisions of the Act and in particular Sections 168, 169 and the proviso to Section 169 in the light of the facts and circumstances of this application.

#### The Pradeshiya Sabha Act

- (7) The Act was enacted in 1987 to provide for the establishment of Pradeshiya Sabhas with a view to providing greater opportunities for the people to participate effectively in the decision making process relating to administrative and development activities at a local level. This is reflected in Section 2(1) of the Act in terms of which the Minister may, with a view to facilitating the effective participation of the people in local government and development functions, declare by Order published in the Gazette any area to be a Pradeshiya Sabha area for the purposes of the Act.
- (8) Section 3 provides that, *“the Pradeshiya Sabha constituted for each Pradeshiya Sabha area shall be the local authority within such area and be charged with the regulation, control and administration of all matters relating to public health, public utility services and public thoroughfares and generally with the protection and promotion of the comfort, convenience and welfare of the people and all amenities within such area”*.
- (9) In addition to the above, Pradeshiya Sabhas are responsible for the maintenance of public drains, waterways, public fairs, local markets, lighting of streets and public

places etc. Thus, a Pradeshiya Sabha plays a very important and critical role in the day to day lives of our People.

- (10) Elections to elect members to a Pradeshiya Sabha are held every five years in terms of the Local Authorities Elections Ordinance, as amended. Members so elected are holding office as trustees of the People and are required to address the day to day issues of the People resident within each Pradeshiya Sabha in an expeditious and efficient manner. It is the paramount duty of all elected representatives of the People to ensure good governance at all times, maintain strict financial discipline in respect of the funds of the local authority they manage as Trustees of the People, and refrain from any abuse of power.
- (11) There are four provisions of the Act which are of particular relevance to the issue that needs to be determined, namely Sections 14, 168, 169 and the proviso to Section 169 of the Act.
- (12) I shall commence with Section 168, in terms of which:

- “(1) The Chairman of every Pradeshiya Sabha shall each year on or before such date and in such form as may be specified by rules, prepare and submit to the Pradeshiya Sabha, a budget for the next succeeding year, and containing an estimate of the available income and details of the proposed expenditure for the ensuing year.*
- (2) Every **Pradeshiya Sabha shall finally consider and adopt the budget together with the amendments, if any, before the commencement of the year** to which such budget relates.*
- (3) The Chairman of the Pradeshiya Sabha may at any time prepare a supplementary budget and lay it before the Pradeshiya Sabha.*
- (4) The Pradeshiya Sabha may pass, modify or reject all or any of the items in any budget or supplementary budget or add any item thereto.”*

- (13) Thus, Section 168 clearly establishes two important factors. The first is that the Chairman of the Pradeshiya Sabha shall be responsible for the (a) preparation of the budget of the Pradeshiya Sabha in terms of the law for the next succeeding year, and (b) submission of such budget to the members of the Pradeshiya Sabha for their consideration and approval. The second is that the members of such Pradeshiya Sabha shall consider the budget presented by the Chairman and either pass, modify or reject such budget.
- (14) The critical element of Section 168 is that a budget approved by the members of the Pradeshiya Sabha must be in place by 1<sup>st</sup> January of each year. The necessity for a Pradeshiya Sabha to have in place a budget for each year approved and adopted by its members is critical since the ability of the Pradeshiya Sabha to carry out its statutory functions in the following year is intrinsically linked to having a budget duly passed by the members of the Pradeshiya Sabha. Furthermore, it demonstrates the ability of the Chairman to command the confidence of the majority of the members of the Pradeshiya Sabha as well as have the necessary finances to attend to the day to day operations and the vital developmental activities of the Pradeshiya Sabha.
- (15) The next provision that is relevant to this application is Section 169 which reads as follows:
- “If the Pradeshiya Sabha **modifies** or **rejects** all or any of the items in any budget or supplementary budget or **adds** any item thereto, and*
- the **Chairman does not agree** with any **such decision** of the Pradeshiya Sabha*
- he shall re-submit the budget or supplementary budget to the Pradeshiya Sabha for further consideration.*
- Where a budget or supplementary budget is **not passed** by the Pradeshiya Sabha within two weeks after it is re-submitted,*
- such budget or supplementary budget shall, notwithstanding that it has **not** been passed by the Pradeshiya Sabha, **be deemed to be the duly adopted budget or supplementary budget of the Pradeshiya Sabha.**”*

(16) Thus, in terms of Section 169, the budget submitted by the Chairman shall be considered as the duly adopted budget of a Pradeshiya Sabha, even though the said budget has not been passed by the Pradeshiya Sabha and therefore does not have the support of the majority of the members of the Pradeshiya Sabha. The law has therefore provided a concession to a Chairman of a Pradeshiya Sabha to continue in office notwithstanding the fact that the Chairman may not have the support of the majority of the members of the Pradeshiya Sabha. I must perhaps emphasise that notwithstanding the above deeming provision in favour of a Chairman, the obligation placed on the Chairman by Section 168 to submit the budget to the Pradeshiya Sabha and to take a vote on such budget must still be complied with, and that the concession under Section 169 extends only to a Chairman who submits a budget to the Pradeshiya Sabha and permits the members to vote on the said budget.

(17) It must be noted that in terms of Section 14 of the Act:

*“(1) All matters or questions authorized by this Act or by any other written law to be **decided** by a Pradeshiya Sabha shall be **decided upon by the majority of members** present at any meeting of the Pradeshiya Sabha held in accordance with the provisions of this Act*

*(2) Where the **votes of the members** present at any meeting are equally divided in regard to any question, the Chairman, Vice-Chairman or other member presiding at the meeting shall, in addition to his vote as a member, have a casting vote.”*

(18) Thus, wherever the Act refers to a decision of the Pradeshiya Sabha or requires a decision to be taken by the members of the Pradeshiya Sabha, it is imperative that such decision is taken by way of a vote of the members present at a general or special meeting of the Pradeshiya Sabha. This position is clearly reflected in Section 169 of the Act which requires a decision of the Pradeshiya Sabha upon the submission, and where applicable, upon re-submission of the budget.

(19) Thus, the law as it stood in 2011 when the Petitioner was elected as a member of the Pradeshiya Sabha of Hingurakgoda and appointed as its Chairman was that as

long as the budget had been presented to the Pradeshiya Sabha, the said budget shall be deemed to be the duly adopted budget of such Pradeshiya Sabha, notwithstanding the fact that it had not been passed by its members.

Proviso to Section 169

(20) A significant amendment to Section 169 was made by Section 17 of the Local Authorities (Special Provisions) Act, No. 21 of 2012 with the addition of a proviso to the said Section.

(21) The decision in P18a that culminated in this application arises from the application of the said proviso to Section 169, which reads as follows:

*“Provided that, if the Council according to sections 168 and 169 of this Act modifies or **rejects** all or **any items in any budget** or supplementary budget or adds any item thereto which was submitted to the Council at any time by the Chairman **after a period of two years** since the commencement of the term of office of the Council, and*

*if the Chairman **does not agree** to such **decision** of the Council,*

***he shall resubmit** the said budget to the Council for further consideration.*

*Where a budget or supplementary budget **is not passed** by the Council within two weeks **after it is resubmitted** for the second time,*

*the **Chairman** shall be **deemed to have resigned** from the office of Chairman at the end of the said period of two weeks.*

(22) I must state that Section 169 and the proviso contemplates two decisions of the Pradeshiya Sabha which attract the provisions of Section 14 and therefore requires a vote by the Pradeshiya Sabha. The first is the decision of the Pradeshiya Sabha to modify, add or reject the budget. The acceptance of a modification and/or an addition, or the rejection of the budget as a whole, should be by way of a majority vote of the Pradeshiya Sabha. The second is the decision of the Pradeshiya Sabha to pass the budget that has been re-submitted by the Chairman.

## Deeming provisions

- (23) The purpose and the consequences of inserting a deeming provision was explained in **Jinawathie and others v Emalin Perera** [(1986) 2 Sri LR 121; at pages 130 and 131] where Ranasinghe, J (as he then was) stated as follows:

*"In statutes the expression "deemed" is commonly used for the purpose of creating a statutory fiction so that the meaning of a term is extended to a subject matter which it properly does not designate. Thus where a person is "deemed to be something" it only means that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were. When a thing is deemed to be something, it does not mean that it is that which it is deemed to be, but it is rather an admission that it is not what it is deemed to be, and that notwithstanding it is not that particular thing it is nevertheless deemed to be that thing. Where a statute declares that a person or thing shall be deemed to be or shall be treated as something which in reality it is not, it shall have to be treated as so during the entire course of the proceeding- vide Bindra: Interpretation of Statutes (6<sup>th</sup> Ed.) pp. 91 2-914. In such a case it has also to be so treated as that something else with the attendant consequences -Stroud - Vol. 2 — (4<sup>th</sup> Ed.) Words and Phrases, p. 716. So too:*

*"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... The statute says that you must imagine a state of affairs; **it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs**".*

*- per Lord Asquith in the case of East End Dwellings Co., Ltd. v. Finsbury Borough Council [1952 A.C. 109, 132]. Thus where, in pursuance of a statutory direction, a thing has to be treated as something which in reality it is not, or an imaginary state of affairs is to be treated as real, then not only will it have to be treated so during the entire course of the proceeding in which such assumption is made, but all the attendant consequences and incidents, which, if the imagined state of*

*affairs had existed, would inevitably have flowed from it, have also to be imagined or treated as real.” [emphasis added]*

(24) **Jinawathie** [supra] has been followed by this Court *inter alia* in Kotagala Plantations Ltd. v Kularatna and others [(2002) 2 Sri LR 392], Wickremanayaka and another v Jayasekera and another [(2002) 2 Sri LR 261], Susangatha De Fonseka v Pussewalage Ashokalatha [SC Appeal No. 107/2015; SC Minutes of 13<sup>th</sup> November 2023], and the Industrial Disputes (Special Provisions) Bill [SC (SD) No: 30/2022].

(25) In its Determination in **Petroleum Products (Special Provisions) (Amendment) Bill** [SC (SD) Nos. 50 – 52/2022], this Court, while reaffirming the above position in **Jinawathie** [Supra], went on to hold as follows:

*“Bennion, Statutory Interpretation (5<sup>th</sup> Ed., page 950) states:*

*“The intention of a deeming provision, in laying down a hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further.”*

***Hence a deeming provision must be constantly construed contextually and in relation to the legislative purpose to ascertain its true effect.***

*In S v. Rosenthal 1980(1) SA 65(A). Trollip J. (at 75H-76A) went on to explain some of the usual meanings and effect of deeming provisions as follows:*

*“That which is deemed shall be regarded or accepted (i) as being exhaustive of the subject-matter in question and thus excluding what would or might otherwise have been included therein but for the deeming, or (ii) in contradistinction thereto, as being merely supplementary, i.e., extending and not curtailing what the subject-matter includes, or (iii) as being conclusive or irrebuttable, or (iv) contrarily, thereto as being merely prima facie or rebuttable. I should add that, in the absence of any indication in the statute to the contrary, a deeming that is exhaustive is also usually conclusive, and one which is merely prima facie or rebuttable is likely to be supplementary and not exhaustive.”*

(26) The effect of the deeming provision contained in Section 181(2) of the Town and Country Planning Act 1971 was the subject of discussion in **Inland Revenue Commissioners v Metrolands (Property Finance) Ltd [(1981) 1 WLR 637]**, where Nourse, J in the Chancery Division went on to hold as follows [from pages 645 – 646]:

*“Mr. Potter’s general submission that deeming provisions must be construed to have effect only for the purposes for which they were enacted is based on the judgment of the Court of Appeal in Murphy v Ingram [1974] Ch. 363. In that case, Russell L.J., in delivering the judgment of the court, said at p. 370 that it had been remarked upon high authority that in considering “deeming” provisions in statutes it was important to have in mind what appeared to be the purpose of their enactment. For that the court referred to some earlier authorities to which I shall come in a moment. ...*

*The earlier authorities on deeming provisions started with Ex parte Walton (1881) 17 Ch.D 746. That was a case on section 23 of the Bankruptcy Act 1869 (the predecessor of section 54 of the Act of 1914), which enabled a trustee in bankruptcy to disclaim, amongst other things, a lease belonging to the bankrupt, whereupon it was deemed to have been surrendered on that date. It was held by the Court of Appeal that such a disclaimer operated as a surrender only so far as was necessary to relieve the bankrupt and his estate and the trustee from liability, and did not otherwise affect the rights or liabilities of third parties in relation to the property disclaimed. At the end of the judgment of James L.J. there appears this passage, at pp. 756-757:*

*“When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to. Now, the bankruptcy law is a special law, having for its object the distribution of an insolvent’s assets equitably amongst his creditors and persons to whom he is under liability, and, upon this cessio bonorum, to release him under certain conditions from future liability in respect of his debts and obligations. That being the sole object of the statute, it appears to me to be legitimate to say, that, when the statute says that a lease, which was never*

*surrendered in fact (a true surrender requiring the consent of both parties, the one giving up and the other taking), is to be deemed to have been surrendered, it must be understood as saying so with the following qualification, which is absolutely necessary to prevent the most grievous injustice, and the most revolting absurdity, 'shall, as between the lessor on the one hand, and the bankrupt, his trustee and estate, on the other hand, be deemed to have been surrendered.'” ....*

*Those were the only authorities to which I was referred on the extent to which deeming provisions or the like can be carried. From them I deduce these principles. **When considering the extent to which a deeming provision should be applied, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to. It will not always be clear what those purposes are. If the application of the provision would lead to an unjust, anomalous or absurd result then, unless its application would clearly be within the purposes of the fiction, it should not be applied. If, on the other hand, its application would not lead to any such result then, unless that would clearly be outside the purposes of the fiction, it should be applied.*** [emphasis added]

- (27) The law pertaining to the application of a statutory fiction introduced by a deeming provision is further explained in **Interpretation of Statutes** by N.S. Bindra [12<sup>th</sup> edition] as follows:

*“The word ‘deemed’ is used a great deal in modern legislation. Sometimes, it is used to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes, it is used to put beyond doubt a particular construction that might otherwise be uncertain or to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible. However, the mere use of the word ‘deemed’ is not in itself sufficient to set up a legal fiction. **Legal fiction is treating something not done as done and this requires legislative authority.** Courts cannot set up legal fictions without such authority.”* [Page 267; Footnotes excluded; emphasis added]

*“Where the legislature says that ‘something should be deemed to have been done’ which in truth has not been done, it creates a legal fiction and in that case, **the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.**” [Pages 267-268; Footnotes excluded; emphasis added]*

*In Mahadeosa Makamansa v Deputy Commissioner [(1954) ILR Nag 341], the Court had to consider the fiction created by Section 18 of the Central Provinces and Berar Municipalities Act, 1922. The provision created a legal fiction that though neither the president nor the vice-presidents of municipalities were members of the Municipal Committee, they shall be deemed in all cases ‘to be members under this Act’. The Court considered the fiction created by the Act, and observed:*

*“As we understand the law relating to the application of statutory fictions to facts, **the Court has got in the first instance to determine what are the limits within which and the purposes for which the Legislature has created the fiction. This may be determined from the actual words used in creating that fiction, and those words must be given their literal and full effect, unless in doing so the purposes of creating the fiction are not achieved.**” [Page 268; emphasis added]*

### The purpose of the deeming provision

(28) Thus, when called upon to give effect to the deeming provision introduced by the proviso to Section 169, this Court must ascertain the purpose for which the legislature created the said fiction. The purpose behind the deeming provision in the proviso is reflected in the following passage taken from the speech made by the then Prime Minister when the said amendment was moved in Parliament :

*“අලුත් ක්‍රමය අනුව අය වැය ලේඛනයකින් කොච්චර පරාජය වුණත්, ඒ සභාපතිවරයා එහෙමම ඉන්නවා. සභාවත් එහෙමම තිබෙනවා. අය වැය ලේඛනය කියන්නේ ඒ සභාවේ වැඩ කරන ක්‍රියාමාර්ගය, මෙන්න මේ විධියටයි මේ වැඩ පිළිවෙළවල් ක්‍රියාත්මක කරන්න ඕනෑ කියලා ගන්නා තීරණයයි. ඒ තීරණය පරාජය වෙනවා කියන්නේ ඒ සභාවේ ඉන්න මන්ත්‍රීවරු කවුරුවත් ඒකට කැමැති නැහැ කියන එකයි. හුඟ දෙනෙක් කැමැති නැත්නම් ඒ සභාවේ ඒ වැඩ පිළිවෙළ ක්‍රියාත්මක*

කරන්න හොඳයි කියලා හිතන්න අමාරයි. මොකද ප්‍රජාතන්ත්‍රවාදීව බැලුවාම අපි පාර්ලිමේන්තුවෙන් කරන්නේ වැඩි දෙනාගේ කැමැත්ත අනුව ක්‍රියාත්මක කිරීමයි. ඒ හා සමානව නගර සභාවේ, සුළු නගර සභාවේ සහ ප්‍රාදේශීය සභාවේ වැඩි දෙනෙක් ඒ වැඩ පිලිවෙළට අකමැති නම් ඒක ක්‍රියාත්මක කරන්න බැහැ. අවුරුද්දක වැඩ පිලිවෙළක් තමයි අය වැය ලේඛනයකින් ඉදිරිපත් කරන්නේ. පාරවල් සඳහා මෙව්වරක් යනවා, පල සම්පාදනයට මෙව්වරක් යනවා, සෞඛ්‍යයට මෙව්වරක් යනවා, අධ්‍යාපනයට මෙව්වරක් යනවා කියලා ඒ තුළින් මුදල් වෙන් කරනවා.

වැඩ පිරිසක් කියනවා නම් ඒ ක්‍රමය හොඳ නැහැ, ඒක නෙවෙයි හරි ක්‍රමය කියලා ඒක වෙනස් කිරීම යෝග්‍යයි. දෙවනාවක් ඒ අය වැය ලේඛනය පරාජයට පත් වුණොත් ඒ සභාපතිවරයා ඉවත් වෙන්න ඔහු. මම හිතන්නේ ඒක හොඳයි. මොකද එතකොට වැඩි දෙනාගේ කැමැත්ත තමයි ඇත්ත වශයෙන්ම එතැන ක්‍රියාත්මක වන්නේ. අද තිබෙන තිත්‍රිය හැටියට; 1987 සම්මත කර ගත් තිත්‍රිය හැටියට අය වැය ලේඛනයකින් කොච්චර පරාජය වුනත් ඒ සභාපතිවරයා එහෙමම ඉන්නවා. කල් ගියාට පස්සේ ඒකම අනුමත කරනවා. **එහෙම නම් ඒක ඒකාධිපති ස්වරූපයක් වාගේ තමයි ඇති වන්නේ.** මොකද වැඩි දෙනෙක් කැමැති නැති වුණත්, ඒක සම්මත වෙලා ක්‍රියාත්මක කරනවා. මම හිතන්නේ ඒක ප්‍රජාතන්ත්‍රවාදයටත්, ඒ ප්‍රදේශයේ ජනතාවගේ හැඟීම් හා බලාපොරොත්තු අනුවත් ක්‍රියාත්මක වන එකක් නොවෙයි.

ඒ හින්දා සභාපතිවරයෙක් ඉවත් වුණු බව කොමිෂනර්ට දැන්වුවාට පස්සේ නව සභාපතිවරයෙක් පත් කර ගන්න පුළුවන් වෙනවා. ඒ අවස්ථාවේදී සභාපතිවරයෙක් අලුතෙන් එනවා. නමුත් ඒ හිටපු සභාපතිවරයා ඉවත් වන්නේ නැහැ. ඒ හිටපු සභාපතිවරයා එහෙමම ඉන්නවා. එතුමා තියෝපිතයෙකු හැටියට හැම දාම එතැන ඉන්නවා ඒකත් හොඳයි. මොකද ඒ සභාපතිවරයාගේ ක්‍රියාමාර්ගයට විරුද්ධ වුණා මසක් ඒ පුද්ගලයාට විරුද්ධත්වයක් නොවෙයි එතැන තිබෙන්නේ. එතකොට ඒ පුද්ගලයාත් ඒතැන ඉන්නවා. මහ ජනතාව පත් කරපු කෙනෙකු හැටියට ඒ ඉඳිම යෝග්‍යයි කියලා තමයි මම කල්පනා කරන්නේ.”

- (29) While being mindful of the aforesaid legislative purpose, a careful reading of the proviso to Section 169 reveals that with its introduction, the concession provided to a Chairman by Section 169 to continue in office notwithstanding his inability to have the duly submitted budget passed by a majority of the members of the Pradeshiya Sabha has been limited to the first two years in office. After the first two years, it is not only imperative that the budget is submitted to the Pradeshiya Sabha, it is also imperative that the budget is passed by majority decision. The law has provided a Chairman with two opportunities of having the budget approved by the members. The difference between the first two years and the period thereafter is that, in the latter period, if the Chairman fails to submit and have the budget for the following year approved by 31<sup>st</sup> December of the preceding year at least at the second opportunity, the Chairman shall be deemed to have resigned from his office.

(30) This is the outcome a literal interpretation of the proviso to Section 169 would give rise to. I am of the view that this Court is obliged to give effect to such interpretation unless it's established to the satisfaction of this Court that the circumstances that are unique and peculiar to the case before Court would warrant a departure from such literal interpretation as it would otherwise result in an absurdity and thereby undermine the true legislative purpose behind the introduction of the deeming provision.

Summary of Sections 168, 169 and the proviso to Section 169

(31) The aforesaid provisions can therefore be summarised as follows:

- a) The obligation of preparing the budget is with the Chairman – vide Section 168;
- b) The obligation of submitting the budget to the Pradeshiya Sabha is with the Chairman – vide Section 168;
- c) The obligation of calling for a meeting of the Pradeshiya Sabha and having the budget passed by the Pradeshiya Sabha is at all times with the Chairman – vide Section 169;
- d) In the first two years however, even if the budget is not passed, it is deemed that the budget submitted by the Chairman is the duly adopted budget of the Pradeshiya Sabha – vide Section 169;
- e) After the first two years, the budget presented by the Chairman must be passed by the Pradeshiya Sabha, with the Chairman being provided two opportunities of seeking the approval of the members – vide the proviso to Section 169;
- f) After the first two years, the failure on the part of the Chairman to have the budget passed either at the first or second opportunities afforded to him would attract the consequences set out in the proviso to Section 169 – i.e. the Chairman is deemed to have resigned from office by operation of law.

## Facts in brief

- (32) This being the legal position, I shall now consider the facts of this application that led to the issuance of P18a.
- (33) The Petitioner states that by letter dated 1<sup>st</sup> April 2013 [P5a], the 2<sup>nd</sup> Respondent had requested all officers attached to the Pradeshiya Sabha to submit the information referred to therein that were required for the formulation and preparation of the budget for the year 2014. P5a had been followed by a letter issued on the same day by the Petitioner [P5b] addressed to all members of the Pradeshiya Sabha calling for the details set out therein, including proposals with regard to the development projects that need to be carried out in 2014 and the budgetary requirements that must be in place in order to implement such projects.
- (34) Several meetings had been held thereafter in order to prepare and finalise the Budget. By letter dated 2<sup>nd</sup> November 2013 [P6a], the Petitioner had invited the members of the Pradeshiya Sabha to be present for a meeting on 6<sup>th</sup> November 2013 to discuss the draft Budget. However, only six members had been present at the said meeting. At the monthly meeting of the Pradeshiya Sabha held on 27<sup>th</sup> November 2013, the Petitioner had once again requested the members to submit their views and recommendations on the draft Budget. Regrettably, only eight members had responded, prompting the Petitioner to circulate the draft Budget with his letter dated 6<sup>th</sup> December 2013 [P6b] with a request that they convey their views and any amendments that they wish to make, by 13<sup>th</sup> December 2013.
- (35) The Petitioner states that he received suggestions and recommendations from several members which he incorporated into the draft Budget and presented to the members at the monthly meeting held on 17<sup>th</sup> December 2013. The Petitioner states further that the draft Budget was read in full at the said meeting and at the request of the 11<sup>th</sup> Respondent, a member of the Pradeshiya Sabha the meeting was adjourned to enable the members to further examine the Budget.
- (36) The Budget was presented to the members of the Pradeshiya Sabha at the meeting held on 24<sup>th</sup> December 2013. The Petitioner states that the Budget was debated and at the vote that followed, 12 members had voted against the Budget while only six

members had voted for the Budget. The Petitioner states that even though the Budget was defeated, *'no suggestions, recommendations, corrections, additions etc., were submitted by any of the members voting against the Budget'*, in spite of him having requested the members to do so. It is thus the position of the Petitioner that the members who voted against the Budget did so not due to any deficiency in the Budget but due to political reasons. Be that as it may, the meeting had been adjourned for 08:45 am on 31<sup>st</sup> December 2013 for the purpose of resubmitting the Budget.

- (37) Even though the Petitioner states that *'no suggestions, recommendations, corrections, additions etc., were submitted by any of the members voting against the Budget'*, he opted to *'incorporate the proposals and amendments put forward by the members'*, and that, *'after considering all discussions that took place on 24<sup>th</sup> December 2013, a revised budget was prepared to be submitted on 31<sup>st</sup> December 2013.'*
- (38) The Petitioner states that he fell ill on his way to the meeting scheduled for 31<sup>st</sup> December 2013 and was admitted to the Hingurakgoda District Hospital. He states that as he could not attend the meeting, he had requested the 3<sup>rd</sup> Respondent, the Deputy Chairman of the Pradeshiya Sabha to submit the 'revised' Budget, which the 3<sup>rd</sup> Respondent had refused to do. The Petitioner states that he however got to know around noon that day of the following matters:
- (a) The 3<sup>rd</sup> Respondent had proceeded with the meeting around 1 ½ hours later than the scheduled time;
  - (b) Only the 14<sup>th</sup> – 24<sup>th</sup> Respondents who had already voted against the Budget on 24<sup>th</sup> December 2013 were present at the said meeting;
  - (c) The 9<sup>th</sup> – 13<sup>th</sup> Respondents had not attended the meeting since they had been of the view that the meeting will not be held;
  - (d) Instead of presenting the 'revised' Budget, the 3<sup>rd</sup> Respondent had presented the Budget which had already been defeated on 24<sup>th</sup> December 2013;

- (e) The Budget that was presented by the 3<sup>rd</sup> Respondent had been defeated for the second time with three members voting for, three members abstaining and six members voting against the Budget.
- (39) If I may reiterate, the Act required that the Budget for 2014 be prepared and submitted by the Chairman and be approved by the members of the Pradeshiya Sabha of Hingurakgoda on or before 31<sup>st</sup> December 2013. The above facts clearly reveal that even though the Petitioner submitted the Budget prior to 31<sup>st</sup> December 2013, the members of the Pradeshiya Sabha did not approve the Budget for 2014 by that date. Thus, on the face of it, the proviso to Section 169 was triggered on 31<sup>st</sup> December 2013.
- (40) The 2<sup>nd</sup> Respondent, in spite of being fully aware of the consequences of the Budget not being approved by 31<sup>st</sup> December 2013, had informed the 4<sup>th</sup> Respondent by letter dated 6<sup>th</sup> January 2014 [P16] that the meeting held on 31<sup>st</sup> December 2013 was invalid in terms of Rule 3(2) of the Pradeshiya Sabha Rules [P1] as the meeting had commenced 30 minutes later than the scheduled time and thus, the Petitioner is not deemed to have resigned from the office of Chairman. By letter dated 17<sup>th</sup> January 2014 [P17b], the 4<sup>th</sup> Respondent had replied P16 confirming the position of the 2<sup>nd</sup> Respondent. However, the very next day, the 4<sup>th</sup> Respondent had changed her position and by P18a informed the 2<sup>nd</sup> Respondent that the Petitioner is deemed to have resigned as Chairman.

#### Submissions of the Petitioner

- (41) My task is to determine the legality of the decision contained in P18a, or in other words, to determine whether the budget of the 1<sup>st</sup> Respondent had been passed in terms of the law, and if not, whether the Petitioner is deemed to have resigned from the office of Chairman as provided for by the proviso to Section 169 of the Act.
- (42) In the course of his submissions and in the post hearing written submissions, the learned Counsel for the Petitioner submitted that Section 169, prior to its amendment in 2012, was used *'as a political and anti-democratic weapon by political conspirators and dictatorial Chairman which allowed them to continue in office without the confidence of the majority of the members of the Pradeshiya*

*Sabha*, and that the *'introduction of the proviso ensured that Section 169 was not used for any such political and undue advantage.'* Thus, the Petitioner is in agreement with the position advanced by the then Prime Minister at the time the said amendment was debated in Parliament that it is contrary to democratic norms of good governance to permit a Chairman who cannot get his Budget approved by the members of the Pradeshiya Sabha since he does not command the confidence of a majority of the members to continue, to continue to hold office as Chairman.

- (43) It was thereafter submitted on behalf of the Petitioner that the *'significance of the proviso is that after the completion of two years in office, a Chairman who rejects the decision of a Pradeshiya Sabha to modify or reject a proposed budget and **fails to obtain a majority vote to pass the proposed budget which he resubmits to the Pradeshiya Sabha** within two weeks when the Budget is first voted on, is deemed to have resigned from the office of Chairman.'* My understanding of the said submission of the learned Counsel for the Petitioner is that he concedes that it is mandatory that the budget presented by the Chairman be approved by the members of the Pradeshiya Sabha and the failure to do so would trigger the proviso to Section 169. Nothing more, nothing less.
- (44) The learned Counsel for the Petitioner however presented four arguments in support of his position that notwithstanding the above, the proviso does not apply to this application in view of the factual circumstances that led to P18a.
- (45) The first argument of the learned Counsel for the Petitioner was that at the time the Petitioner was appointed as Chairman in 2011, the law that prevailed was limited to Section 169 in terms of which the Budget is deemed to be the Budget of the Pradeshiya Sabha notwithstanding the fact that it has not been passed by the members of the Pradeshiya Sabha. He submitted further that the proviso introduced in 2012 through Section 17 of the Local Authorities (Special Provisions) Act, No. 21 of 2012 does not apply to the Petitioner since the Petitioner by then, was already holding office as Chairman.
- (46) I must state that in the application of the proviso, the legislature did not draw a distinction between a Chairman who was elected or appointed prior to or after the

said amendment came into force. I am therefore of the view that once the amendment was passed by Parliament, it's the amended Act that will apply to which even the Petitioner will be subjected to.

(47) Furthermore, presenting the budget is an annual requirement and a continuing obligation, and while the concession in the first two years can be justified as being a grace period to permit a Chairman to settle down in office and arrange his affairs, however undemocratic it may be as urged by the Petitioner himself, the removal of such concession from the third year of office must apply to any Chairman, irrespective of whether such Chairman had been appointed prior to or after the introduction of the proviso. Hence, I am not in agreement with the first argument of the learned Counsel for the Petitioner.

(48) I must perhaps state that the legislature did in fact draw a distinction as argued by the learned Counsel for the Petitioner but that was only in the latter part of 2014 when it introduced Section 169A by the Pradeshiya Sabha (Amendment) Act, No. 36 of 2014, which reads as follows:

*“The provisions of the proviso to section 169 of the Pradeshiya Sabha Act as amended by the Local Authorities (Special Provisions) Act, No. 21 of 2012 shall not be applicable to any budget or supplementary budget to be submitted to a Pradeshiya Sabha constituted in terms of the results of the elections held prior to the date of coming into operation of Local Authorities (Special Provisions) Act, No. 21 of 2012 and Local Authorities Elections (Amendment) Act, No. 22 of 2012 respectively”.*

(49) The aforesaid amendment reinforces my view that as the law stood on 1<sup>st</sup> January 2014, the deeming provision in the proviso to Section 169 applied to the Petitioner.

(50) The second argument of the learned Counsel for the Petitioner was that the proviso was to become effective only once the Local Authorities Elections (Amendment) Act, No. 22 of 2012, and more particularly Section 48 thereof, which introduced Section 66B to the principal enactment, came into effect. Section 66B(4) provided that if a vacancy occurs in the office of Chairman in terms of Section 169, the Secretary of the Political party to which the former chairman belonged to shall nominate another

person to fill such vacancy. However, if the newly appointed Chairman too resigns, the Pradeshiya Sabha shall be deemed to be dissolved and a Special Commissioner shall be appointed for the balance period. It is clear that Section 66B sets out the consequential steps that must be taken once the proviso to Section 169 has been triggered. In the absence of the legislature drawing a distinction between a Chairman elected or appointed prior to and after the amendment in 2012, I am of the view that the provisions of Act No. 22 of 2012 would apply to the facts of this application.

- (51) The third argument of the learned Counsel for the Petitioner was that the proviso only applies where the Chairman autocratically persists in ignoring or disregarding the will and intent of the members of the Pradeshiya Sabha and continues to present a budget that has once been rejected since he does not agree with the decision of the members, and not to a Chairman such as the Petitioner who amends the budget that has once been rejected by the members.
- (52) I regret I am unable to agree with this submission as Section 169 and its proviso very clearly stipulate that after the first two years, the budget presented by the Chairman must be passed by the Pradeshiya Sabha for which the law has provided the Chairman two opportunities, and where that does not happen, the Chairman shall be deemed to have resigned from his office. In other words, the inability of the Chairman to have the Budget passed by 31<sup>st</sup> December triggers the deeming provision contained in the proviso to Section 169.
- (53) The final argument of the learned Counsel for the Petitioner was that according to Rule 3(2) of the Pradeshiya Sabha Rules, if any meeting is delayed by 30 minutes from the scheduled time, the 2<sup>nd</sup> Respondent must re-schedule the meeting to a convenient date not exceeding 15 days, and that since the meeting held on 31<sup>st</sup> December 2013 commenced over an hour and half late, the said meeting is invalid, thus rendering the decisions taken at such meeting, including the vote on the Budget, invalid. While the said Rule does not say that a meeting held 30 minutes after the scheduled time is invalid, this submission is counterproductive as it is the obligation of the Chairman to have the budget passed by 31<sup>st</sup> December, or else face the consequences .

## Conclusion

- (54) In the above circumstances, I am of the view that the Petitioner has failed in his obligation to have the budget passed in terms of Section 168 and therefore the deeming provision contained in the proviso to Section 169 has been triggered. A literal interpretation of the deeming provision of the proviso to Section 169 warrants me to conclude that the Petitioner is deemed to have resigned from the office of Chairman of the 1<sup>st</sup> Respondent Pradeshiya Sabha with effect from 31<sup>st</sup> December 2013. The result is that there is a vacancy in the office of Chairman. This, in my view, is what was intended by the legislature when it introduced the proviso to Section 169 in 2012. P18a is therefore in order.
- (55) Accordingly, I am of the view that the fundamental rights of the Petitioner guaranteed by Articles 12(1) and 14(1)(g) have not been infringed by the Respondents. This application is accordingly dismissed, without costs.

**JUDGE OF THE SUPREME COURT**

**Sampath B. Abayakoon, J**

I agree

**JUDGE OF THE SUPREME COURT**

**M. Sampath K.B Wijeratne, J**

I agree

**JUDGE OF THE SUPREME COURT**