

**ALAWWA AND 4 OTHERS**  
**V.**  
**KATUGAMPOLA MPCS AND ANOTHER.**

**SUPREME COURT.**  
**DR. AMERASINGHE, J.**  
**DHEERARATNE, J.**  
**ANANDACOOMARASWAMY, J.**  
**S.C. 89/96.**  
**C.A. 718/83.**  
**SEPTEMBER 30, 1996.**

*Constitution - 13th Amendment art 154(G)(1), art 154(G)(8), art 154(H)4 Co-operative Employees Commission Act 12 of 1972 - Provincial Councils (Consequential Provisions) Act 12 of 1989 - Provincial Council list - Co-operative Employees Commission (N.W. Province) - appointed by Provincial Minister - Validity - In the absence of a statute?*

The 2nd Respondent was an employee of the 1st Respondent MPCS. After a disciplinary inquiry the 2nd Respondent's services were terminated, and she appealed to the C.E.C. (N.W. Province) for redress.

1-3 Appellants the members of the CEC (NW Province) appointed by the Provincial Minister directed the 1st Respondent Society to reinstate and to pay her a specific sum of money as compensation. The 1st Respondent then sought to quash the said order in the Court of Appeal.

The Court of Appeal dismissed the application holding that

(1) There is no institution known as CEC established to date by the North Western Provincial Council by statute.

(2) The Provincial Minister in charge of the subject could not have resorted either to CEC Act 12 of 1972 and Provincial Councils (Consequential Provisions) Act No. 12 of 1989 to appoint members to a non-existing CEC.

(3) The Petitioner cannot seek relief to quash an order which is ab initio invalid as that order was not made in the exercise of Statutory power by the 1-3 Respondent.

**On appeal by the members of the commission:**

**Held :**

(1) ART 154(G)8 unequivocally serves to keep alive all the laws in force on matters relating to the Provincial list, when a Provincial Council is established, subject to the specified limitations. The article also makes it clear as to when a law in force remains suspended and inoperative (not repealed) in that Province and that is when subsequently the Provincial Council makes a statute on the same matter which is described in its long title as being inconsistent with the law in force and when that statute receives assent and so long as it is in force.

(2) Section 3 of Act, 12 of 1972 - CEC Act - read with Articles 154(G) (1) and (8) of the Constitution necessarily compels to recognise the lawful establishment of a Co-operative Employees Commission in the North - Western Province.

Therefore the appointment of the 1-3 Appellants by the relevant Minister is valid and lawful.

**APPEAL** from the judgment of the Court of Appeal.

**Case referred to:**

1. *In the matter of a Reference under ART 154(H) (4) of the Constitution for a determination relating to the Transport Board Statute - Take over of Assets and liabilities of the North and Eastern Province Transport Board. S.C. 7/89 (special) PPA/2/P.C./19 - SCM 22.2.1991.*

*R.K.W. Goonesekara with W. Dayaratne for Appellants.*

No appearance for 1st Respondent.

2nd Respondent present in person.

*Saleem Marsoof D.S.G. for A.G. as Amicus Curiae.*

*Cur.adv.vult.*

October 30, 1996.

**DHEERARATNE, J.**

The facts necessary for the determination of this appeal are briefly these. The 2nd Respondent was an employee of the 1st Respondent MPCs . After a disciplinary inquiry, the 2nd Respondent's services were terminated and she appealed to the Co-operative Employees Commission of the North Western Province for redress. The 1st to 3rd Appellants are members of that Commission having being appointed

by the Provincial Minister in terms of Provincial Councils (Consequential Provisions) Act No. 12 of 1989 : and the 4th Appellant is its Secretary.

The Commission after inquiry, directed by its order dated 22.7.93 the 1st Respondent MPCS, to reinstate the 2nd Respondent and to pay her a specific sum of money as compensation, within a given time. The 1st Respondent then applied to the Court of Appeal to issue a writ of Certiorari to quash the order of the Commission dated 22.7.93. The Court of Appeal dismissed the application holding that :-

(1) There is no institution known as the Co-operative Employees Commission established to date by the North Western Provincial Council by statute;

(2) The Provincial Minister in charge of the subject could not have resorted either to Co-operative Employees Commission Act, No 12 of 1972 or Provincial Councils (Consequential Provisions) Act, No. 12 of 1989 to appoint members to a non existing Co-operative Employees Commission;

(3) The Petitioner (presently the 1st Respondent) cannot seek relief to quash an order which is ab initio invalid as that order was not made in the exercise of statutory power by the 1st to 3rd Respondents (present 1st to 3rd Appellants).

The appeal thus raises an interesting question of Constitutional importance relating to the application of the 13th Amendment to the Constitution. Article 154G (1) of the Constitution enables every Provincial Council, subject to the provisions of the Constitution, to make statutes applicable to the Province for which it is established, with respect to any matter set out in "the Provincial Council List". In that list item 17.3 refers to the "Provincial Co-operative Employees Commission". What of the Laws already in the statute-book dealing with the delegated subjects mentioned in the Provincial Council List? Nowhere in the Constitution it is stated that those Laws stand repealed with the establishment of a Provincial Council for every province. As Mr. Goonesekera correctly points out, the answer to that question is contained in Article 154G (8). Unfortunately attention of the Court of Appeal had not been drawn to that provision. That reads :-

"Where there is a law with respect to any matter on the Provincial Council List in force on the date on which this Chapter [chapter XVIIA inserted by the 13th Amendment] comes into force, and a Provincial Council established for a Province subsequently makes a statute on the same matter and which is described in its long title as being inconsistent with that law, then, the provisions of the law shall with effect from that date on which that statute receives assent and as long as that statute is in force, remain suspended and be inoperative within that Province."

In my view this Article unequivocally serves to keep alive all the laws in force on matters relating to the Provincial Council List, when a Provincial Council is established, subject to the specified limitations. [See in the matter of a Reference under Article 154H (4) of the Constitution for a determination relating to the Transport Board Statute - Take over of Assets and Liabilities of Northern and Eastern Province Transport Board.<sup>(1)</sup>]

Thereby in the first place it eliminates a situation where no law will prevail on those topics until a Provincial Council makes statutes; secondly it obviates the formidable task on the part of a Provincial Council to legislate virtually overnight, a mass of statutes relating to several subjects in that list, so as to substitute what is already in force enacted perhaps during a long course of years. The Article also makes it clear as to when a law in force remains suspended and inoperative (not repealed) in that Province: and that is when subsequently the Provincial Council makes a statute on the same matter which is described in its long title as being inconsistent with the law in force and when that statute receives assent and so long as it is in force.

Let me now turn to the provisions of the Co-operative Employees Commission Act No 12 of 1972. Section 3 reads "for the purpose of the Act, an authority known as the Co-operative Employees Commission shall be established". This section read with Articles 154G(1) and (8) of the Constitution necessarily compels us to recognize the lawful establishment of a Co-operative Employees Commission in the North Western Province. Therefore, the appointment of the 1st to 3rd Appellants by the relevant Minister in charge of that function as Chairman and members of the Commission respectively under the provi-

sions of the Provincial Councils (Consequential Provisions) Act No 12 of 1989 is valid and lawful.

For the above reasons, we set aside the judgment of the Court of Appeal and send the matter back for consideration of the application for writ on its merits. The Commission was not made a party by the Petitioner (present 1st Respondent) on the assumption that it was non-existent; steps should be taken to add the Commission as a party. The appeal is allowed with no costs. The Registrar is directed to send the record back to the Court of Appeal as expeditiously as possible to enable the Court of Appeal to hear and determine the matter at its earliest convenience.

**AMERASINGHE, J.** – I agree.

**ANANDACOOMARASWAMY, J.** – I agree.

*Appeal allowed.*