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**MENDIS**  
**VS**  
**BERTY PREMALAL DISSANAYAKE AND OTHERS**

COURT OF APPEAL.  
SRISKANDARAJA. J.  
CA 2416/2004.  
FEBRUARY 9, 2006.

*Writ of Mandamus- Suspension of Chairman/Member of a Pradeshiya Sabawa after a Commissioner has been appointed to inquire into charges - No New material - Validity? Pradeshiya Saba Act, 15 of 1987- Section (1), (2) (3).*

The petitioner sought a Writ of Certiorari to quash the decision of the 1st respondent - Chief Minister to suspend the petitioner as member and Chairman of the Thalawa Pradeshiya Sabawa. The petitioner was issued with a charge sheet containing 11 charges for acting contrary to certain Rules of the Finance and Administrative Regulations of the Pradeshiya Sabha. The 2nd respondent was appointed as a "One man Commission" to inquire into the charges on 30.04.2004. The charges were amended and on the amended charges the inquiry commenced on 22.07.2004. The 1st respondent Chief Minister thereafter suspended the petitioner as member and Chairman of the Sabha by his order dated 06.08.2004 ; three months after the appointment of the "One man Commission".

**HELD :**

- (1) The Minister has discretion to suspend the Chairman depending on the circumstances of each case- Section 185(3) clearly lays down the point in time the Minister could exercise

his discretion *i.e.* the time of appointing a retired judicial officer under 185 (2).

- (2) The Minister has not taken steps with regard to suspension at the time of appointing a retired judicial officer and had allowed the Chairman to function even after the said appointment, which shows that the Minister was of the opinion that there is no imminent damage or break down in the administration of the Sabha and prompt action was not necessary.
- (3) If the Minister had not formed an opinion at the time of appointing a judicial officer, he cannot on a subsequent time form such an opinion without any new material that warrants another inquiry.

**AN APPLICATION** for a Writ of Certiorari.

*Upul Jayasuriya* with P. Radhakrishnan for petitioner  
*L. M. K. Arulanandan* DSG for 1st, 3rd and 5th respondents.

*Cur. adv.vult.*

20th March, 2006.

**SRISKANDARAJAH. J.**

The Petitioner in this application has sought a writ of Certiorari to quash the decision of the 1st Respondent to suspend the Petitioner as member and Chairman of the Thalawa Pradeshiya Sabha by his Order published in the Gazette No. 1352/34 dated 06.08.2004, Marked P8. He has also sought a writ of Certiorari to

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quash the decision of the 1st Respondent to appoint the 2nd Respondent as the Commission of Inquiry and any decision or report the 2nd Respondent may issue. This relief was not perused by the Petitioner when this matter was taken up for argument.

The Petitioner submitted that he was elected in the Local Government Elections in March 2002 as a member and was appointed as the Chairman of the Thalawa Pradeshiya Sabha. He submitted that he was discharging his duties diligently and he has always complied with all the laws, rules and regulations governing the Sabha. He further submitted that the 1st Respondent is his political rival as the Petitioner contested the General Elections against the son of the 1st Respondent in a different political party. He lost the election and after the announcement of the result, he was arrested by the Police on 03.04.2004 based on false complains. He was enlarged on bail by the Magistrate's Court on 22.04.2004. The Petitioner submitted that he was issued with a charge sheet (P2) by the 1st Respondent acting under Pradeshya Sabhas Act No.15 of 1987 on 08.04.2004 containing 11 charges, alleging that the Petitioner is guilty of acting contrary to one or more Rules 177 to 179 and 208 of the Financial and Administrative Regulations of Pradeshiya Sabhas. The 1st Respondent by his letter dated 30.04.2004 (P4) intimated the appointment of the "One Man Commission" to inquire in to the charges served on the Petitioner.

The 1st Respondent admits the fact that a "One Man Commission" was appointed to inquire in to the charges against the Petitioner on 30.04.2004 and submitted that the charges were framed on an investigation of the Commissioner of Local Government acting in terms of the Pradeshya Sabhas Act. The 2nd Respondent 'One Man Commission' thereafter reframed the charges and served on the Petitioner on 04.06.2004 which contains 8 charges (P6).

The 2nd Respondent commenced the inquiry on 22.07.2004. The Petitioner while the inquiry was pending invoked the jurisdiction of the Provincial High Court to issue a writ to quash the appointment of the 2nd Respondent as Commission of Inquiry and to stay the inquiry proceedings. Thereafter the 1st Respondent by an order dated 06.08.2004 published in the Gazette suspended the Petitioner's membership and Chairmanship of the said Pradeshya Sabha. After the suspension of the Petitioner's membership and Chairmanship an amended Petition was filed in the Provincial High Court and an interim relief was sought to stay the operation of suspension. As the Petitioner was not successful in obtaining an interim relief he withdrew the said application and filed this application.

The learned D. S. G. submitted that the Petitioner is not entitled in invoke the jurisdiction of this Court as he has already invoked the jurisdiction of the Provincial High Court in the same matter. Even though the Petitioner has sought the same relief in the Provincial High Court the counsel for the Petitioner in this court restricted his relief to prayer (c) of the Petition filed in this case. As the application before the Provincial High Court was withdrawn with liberty to file fresh application and as the Provincial High Court has not gone into the merits of the application and as this Court has concurrent jurisdiction to hear and determine this application this Court over rules the objection of the learned counsel for the Respondents and proceeds to consider the merits of this application.

It is an admitted fact that the charges against the Petitioner were framed and served on 08.04.2004 containing 11 charges. The 2nd Respondent was appointed as a 'One Man Commission' to inquire into the charges against the Petitioner on 30.04.2004. The

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charges were amended and on the amended charges the inquiry commenced on 22.07.2004. It is also admitted that the 1st Respondent suspended the Petitioner as member and Chairman of the Thalawa Pradeshiya Sabha by his Order published in the Gazette No. 1352/34 dated 06.08.2004, Marked P8, three months after the appointment of the 'One Man Commission'

It is relevant at this point to consider the relevant provisions of law.

Section 185 of the Pradeshiya Sabhas Act provides :

185. (1) If any time the Minister is satisfied that there is sufficient proof of -

- (a) incompetence and mismanagement, or
- (b) persistent refusal or willful neglect to perform the duties imposed by this act, or
- (c) misconduct in the performance of those duties, or
- (d) persistent disobedience to or disregard of the directions, instructions or recommendations of the Minister, or the Commissioner, or
- (e) abuse of the powers conferred by this Act on the part of the chairman of a Pradeshiya Sabha or any of the Members of the Pradeshiya, Sabha,

the Minister may as the circumstances of each case may require, by Order published in the Gazette.

- (i) remove the Chairman from office, or
- (ii) remove all or any of the members from office ; or
- (iii) dissolve the Pradeshiya Sabha

and such Order shall as soon as may be convenient be laid before Parliament

(2) The Minister shall before making an Order under subsection (1), appoint, for the purpose of satisfying himself in regard to any of the matters referred to in subsection (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 Commissions of Inquiry Act.

(3)(a) When the Minister appoints a retired Judicial officer under subsection (2) to inquire into any matter, the Minister may, as the circumstances of each case may require, by Order published in the Gazette—

- (i) suspend the Chairman from office and direct the Vice Chairman or, where the office of the Vice-Chairman is vacant or where the Vice- Chairman has been suspended, the Assistant Commissioner of the region, to exercise the powers and perform the duties of the Chairman; or
- (ii) suspend any of the members from office ; or
- (iii) suspend the Pradeshiya Sabha and direct the Assistant Commissioner of the region to exercise the powers and perform the duties of that Pradeshiya Sabha and its Chairman.

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(b) Upon the receipt of the report of the person appointed under subsection (2), the Minister may make an Order under subsection (1) or revoke the Order made under paragraph (a) of this subsection.

(4) Where the Minister removes any member of a Pradeshiya Sabha from office by Order under subsection (1), the member appointed in place of such member who is removed, shall hold office for the unexpired period or portion of the term of office of his predecessor.

(5).....

(6).....

(7).....

Section 185 (3) specifically provides that when the Minister appoints a retired judicial officer under subsection (2) to inquire into any matter, the Minister may, as the circumstances of each case may require by order published in the Gazette suspend the Chairman from office.

By this provision the Minister has discretion to suspend the Chairman depending on the circumstances of each case. Suspension may involve hardship and may cast a slur on the good name and reputation of a duly elected member of a local authority ; as such the discretion must be exercised reasonably and with circumspection. But this subsection has clearly laid down the point in time the Minister could exercise his discretion *i. e.* at the time of appointing a retired judicial officer

under subsection (2). the specification of this time has a purpose; that the Minister appoints a retired judicial officer to satisfy himself with regard to any of the matters referred to in subsection(1)(a) to (e), these matters are of serious nature. The suspension is due to an exceptional situation which plainly call for swift and immediate action; action directed to prevent a beakdown in the administration of the Sabha; that the circumstances call for the suspension of the Chairman from office in order to control the maladministration. In other words, what is envisaged is a state of affairs which call for prompt action in order to arrest a rapidly deteriorating situation, lest there be a breakdown in the administration of the Sabha. Therefore the Minister is given a discretion to suspend the Chairman at the time of the appointment of the retired judicial officer to inquire into the matters in issue. At the time of this appointment the Minister was aware of the allegations and the charges against the Chairman and the Minister was in a position to decide whether those allegations and charges are so serious that warrants the suspension of the Chairman. But the Minister has not taken any steps with regard to suspension at the time of appointing a retired judicial officer to inquire into the allegations and the charges against the Chairman and allowed the Chairman to function even after the appointment of a retired judicial officer, that shows that the minister was of the opinion there is no imminent danger or breakdown the administration of the Sabha and prompt action was not necessary. If the Minister had not formed an opinion at the time of appointing a retired judicial officer that the suspension of the Chairman was necessary. he cannot on a subsequent time, in this case after three months, form such an opinion without any new material that warrants another inquiry. The Respondents have not taken up the position that they had new material to suspend the Chairman on a subsequent day. For the aforesaid reasons the Ministers decision to suspend the Chairman without additional material on a date

subsequent to the appointment of the retired officer the "One Man Commission" is illegal and unreasonable. Therefore this Court issues a writ of Certiorari quashing the decision of the 1st Respondent to suspend the Petitioner as a member and Chairman of the Thalawa Pradeshiya Sabha published in Gazette No.1352/34 dated 06.08.2004. The court makes no order with regard to costs.

*Application allowed.*

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