

RATNASIRI RAJAPAKSHA  
v.  
RATNASIRI WICKRAMANAYAKE AND OTHERS

SUPREME COURT.  
DR. AMERASINGHE, J.  
DHEERARATNE, J. AND  
WIJETUNGA, J.  
S.C. APPEAL NO. 95/96.  
C.A. APPLICATION NO. 350/94.  
OCTOBER 15, 1996.

*Writ of Certiorari – Removal of the Chief Executive Officer of a Local Authority – Section 2, the Powers of Supervision of the Administration of Local Authorities Statute, No. 4 of 1991 of the Western Provincial Council – Section 2 of the Statute.*

The petitioner who was the Mayor of the Colombo Municipal Council was removed from his office by the 1st respondent who was the then Minister in charge of the subject of Local Government in the Western Provincial Council. By a letter dated 19.5.94 the 1st respondent informed the petitioner that in the report of O. S. M. Seneviratne (5th respondent, a retired judicial officer) it is stated that in respect of 3 matters, the petitioner had acted contrary to the provisions of the Municipal Councils Ordinance. The 1st respondent added that he was "compelled" in the exercise of his powers under the powers of supervision of the Administration of Local Authorities Statute, No. 4 of 1991 of the Western Provincial Council to remove the petitioner from the office of Mayor.

**Held:**

On a plain reading of the provisions of Section 2 of the Statute, the duty of the Minister is to read the report of the retired judicial officer and with the assistance of his findings of fact to proceed to be personally satisfied that there were one or more acts or omissions specified in Section 2(1)(a)-(d) of the Statute. The Minister is also statutorily obliged to exercise his own judgment as to whether in the circumstances of the case he ought to remove the Mayor. He is not under any legal compulsion to remove the Mayor even if he was satisfied that the Mayor was guilty of one or more of the acts or omissions specified in Sections 2 (1)(a)-(d).

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

*Romesh de Silva, P.C. with Palitha Kumarasinghe and Ms. S. Amarasekera for petitioner.*

*S. Sivarasa, P.C., with S. Mahenthiran for 2nd and 4th respondents.*

*K. C. Kamalasekera, P.C., A.S.G. with N. Pulle S.C for 6th respondent.*

1st and 5th respondents unrepresented.

February 25, 1997.

**DHEERARATNE, J.**

The petitioner was the Mayor of the Municipal Council Colombo and the 1st respondent was at the time material to this action, the Minister of Western Province Provincial Council, to whom the subject of Local Government was assigned. The 1st respondent appointed the 5th respondent to inquire into and report on five charges made against the petitioner. The 5th respondent having inquired into the allegations reported to the 1st respondent that there was sufficient evidence to prove three of those charges. The 1st respondent then wrote the letter dated 19.5.94 to the petitioner removing him from the office of Mayor.

An English rendering of the Material part of that letter which is in Sinhala reads:-

*According to the material contained in the (report) of the O. S. M. Seneviratne Commission, out of the 5 matters alleged against you it is stated that in respect of 3 matters you have acted contrary to the provisions of The Municipal Councils Ordinance.*

02. I also Kindly inform you that in terms of powers vested in me in accordance with the provisions of Powers of Supervision of the Administration of Local Authorities Statue No. 4 of 1991 of the Western Province, I am compelled to remove you from the office of Mayor, with effect from 20th of this month.

03. For your information I am sending herewith a copy of the report of the O. S. M. Seneviratne Commission.

The petitioner then moved the Court of Appeal by way of an application for a Writ of Certiorari to get the order of the 1st respondent contained in the letter referred to above quashed on several grounds. One of the grounds was that the decision of the 1st respondent to remove the petitioner was taken without satisfying himself of the matters referred to in the report of the 1st respondent. The Court of Appeal dismissed the application for Writ on several grounds namely:-

(a) that the intention of the Statute was to delegate the function of deciding whether the relevant authority was guilty or not of any of the acts set out in section 2(i) (a) to the retired judicial officer;

(b) that the existence of the report of the inquiry officer satisfied that requirement of satisfaction of the Minister;

(c) that the Minister was obliged to act on such report in the exercise of his discretion under section 2(1) (i), and where he does act, the presumption is that he did so on the facts revealed in the report;

(d) that although the letter of the Minister does not expressly state that the Minister was satisfied that the petitioner was guilty of the acts set out in the report, it is implicit in that letter that he in fact considered the report before arriving at the decision to remove the petitioner from office; and

(e) that the Minister was not in any event bound by the general rule requiring him to direct his own mind to such matters but could act on the report of a competent inquiry officer.

The petitioner has appealed to this Court from the judgment of the Court of Appeal and it is primarily contended on his behalf that the Court of Appeal misconstrued the relevant provisions of the Provincial Council statute regarding the function of the Minister vis-a-vis the report of the inquiry officer. Let me set down in full at this stage subsections (1) and (2) of section 2 of The Powers of Supervision of the Administration of Local Authorities Statute No. 4 of 1991 of the Western Province Provincial Council:-

2(1). If at any time the Minister of Board of Ministers of the Provincial Council of the Western Province to whom the subject of Local Government has been assigned is satisfied that there is sufficient proof of –

(a) Incompetence and mismanagement; or

(b) persistent default in performance of duties imposed by the relevant law, statute or any other written law; or

(c) persistent refusal or neglect to comply with any provisions of law or statute; or

(d) abuse of powers conferred by the relevant law statute or any other written law; or

(e) persistent refusal to hold or attend meetings or to vote or to transact business at any meeting to be held.

On the part of any Local Authority, or any of the members of any Local Authority, or on the part of the Chief Executive Officer of any Local Authority, the Minister may as the circumstances of each case may require by order published in the Gazette:-

(i) remove the Chief Executive Officer of such Authority; or

(ii) remove all or any of the members of such Authority from office; or

(iii) dissolve such Local Authority;

and such order shall as soon as may be convenient be laid before the Provincial Council.

(2) The Minister shall before making an Order under subsection (1) (i) or (ii) or (iii) appoint for the purpose of satisfying himself in regard to matters referred to in paragraph (sic) (i) a retired Judicial Officer to inquire into and report upon such matter within a period of three months, and the person so appointed shall in relation to such inquiry, have the powers of a Commission of Inquiry under the Commissions of Inquiry Act.

On a plain reading of those provisions, the Minister may make an order of removal of the Mayor (the Chief Executive Officer), **if he is satisfied that there is sufficient proof** of one or more acts of misdemeanour (a) to (e) on the part of the Mayor, however the Minister shall before making the said order of removal, **for the purpose of satisfying himself** in regard to those matters (a) to (e),

appoint a retired judicial officer to inquire and report on such matters. The process by which the Minister satisfies himself is the consideration of the report of the inquiry officer. It was contended on behalf of the contesting respondents that the Minister's decision being a political decision, it would be improper for him either not to make an order of removal in accordance with a report of an inquiry officer holding a Mayor guilty of any misdemeanour or to make an order of removal disregarding a report of an inquiry officer exonerating a Mayor of any misdemeanour.

I am unable to accept the contentions of learned counsel for the respondents and the interpretation placed on section 2 of the Powers of Supervision of the Administration of Local Authorities Statute No. 4 of 1991 of the Western Provincial Council. The duty of the Minister is to read the report of the retired Judicial Officer and with the assistance of his findings of fact to proceed to be personally satisfied that there were one or more acts or omissions specified in section 2(1) (a) – (d). If the Minister, who is the 1st respondent, was in fact satisfied after a perusal of the retired Judicial Officer's report, he failed to refute the averment of the petitioner that he did not satisfy himself that there were one or more acts or omissions specified in section 2(1) (a) – (d). Section 2 (2) does require the Minister to appoint a retired Judicial Officer to inquire into and report to him on the allegations specified in the terms of reference issued to the inquiring officer. However section 2 (2) makes it abundantly clear that the inquiry is for the purpose of assisting the Minister to make up his mind: the words 'for the purpose of satisfying himself', in my view, places the meaning of the provision beyond dispute.

Not only should the Minister have satisfied himself that the Mayor was guilty of one or more acts or omissions falling within the scope of sections 2(1) (a) – (d), he was statutorily obliged, in my view, to have exercised his own judgment as to whether in the circumstances of the case he ought to remove the Mayor. The Minister was, in my view, by no means under any legal compulsion to remove the Mayor even if he was satisfied that the Mayor was guilty of any one or more of the acts or omissions specified in section 2(1) (a) – (d): section 2 provides that "the Minister may as the circumstances of each case

may require ... remove the Chief Executive Officer of such Authority". The Minister and the Court of Appeal erroneously believed that where the inquiring officer found the Mayor guilty of some of the acts and omissions specified in the terms of reference, the Minister had no choice in the matter and that he was bound to remove the Mayor. Learned Counsel for the respondents maintained that the Minister's decision is a 'political decision'. If that be the case, could it have been intended that the decision of a retired Judicial Officer engaged for a limited fact-finding purpose and not accountable to the electors was to be vested with the virtual power of removal of the Mayor? I do not think so.

For the foregoing reasons, the judgment of the Court of Appeal is set aside and order of Writ of Certiorari to issue quashing the order made by the 1st respondent contained in his letter dated 19.5.94 removing the petitioner from the office of Mayor. Parties will bear their own costs of litigation.

**DR. AMERASINGHE, J.** – I agree.

**WIJETUNGA, J.** – I agree.

*Appeal allowed.*