



# **JUDICIAL DECISIONS RELATED TO ELECTIONS**



Lawyer Jagath Liyana Arachchi

- Published by PAFFREL -

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Attorney-at-Law, Jagath Liyan Arachchi

Published by

PAFFREL



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First Printing - August 2022

Authored by  
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On behalf of PAFFREL Publications

ISBN 978-624-6235-06-2

Photo of the Cover  
**Chamila Karunarathne**

Page Layout  
**Media Unit of PAFFREL**

Published by

**PAFFREL**

No.16, Byrde Place, Off, Pamankada Rd, Colombo 00600

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## **PAFFREL's Message**

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To publish a book on the judicial decisions related to elections in Sri Lanka can be noted as a need of the hour. It is a great pleasure to note that this publication is a realization of the long-awaited dream of compiling a publication specially dedicated to unique judicial decisions in the history of elections in Sri Lanka.

We have a long electoral history as the oldest state in Asia to exercise any franchise. The contribution made through the judgments that confirmed the sovereignty of the people as enshrined in Article three of the Constitution of Sri Lanka is immense. Additionally, broader and more meaningful interpretations given by famous Justices like Mark Fernando provide ample examples of the extent to which the franchise spreads.

One who studies these judgments could realize the whole gamut of barriers and challenges faced in the long journey of ensuring free and fair elections we are experiencing today. Additionally, this publication will undoubtedly stimulate an individual who wishes to study the electoral history of this country. One of our main objectives in making this publication is to collect and collate a range of judicial decisions, some of which were recorded, to enable the readers to effortlessly access all important judicial decisions on elections in one publication. This book will, not only for those who study political science but also for those who love politics, provide a window into a different political reading.

As a tribute to our colleague, Attorney-at-Law, Mr Jagath Liyana Arachchi, who always opts to take on challenging tasks, it is essential to note that he has done the best justice to the booklet by investing a tremendous amount of effort in preparing this publication. Additionally, the support and cooperation extended by the Chairperson of the Election Commission of Sri Lanka, Attorney-at-Law,

Mr Nimal Punchihewa, Election Commissioner General Mr Saman Sri Rathnayake and other officials of the Commission are commendable in making this publication. Further, the former Chairperson of the Election Commission, Mr Mahinda Deshapriya, extended immense support by providing the information needed for this publication, for which I extend my appreciation. I take this opportunity to thank Mr Thusitha Siriwardana, Attorney-at-Law, for ensuring the English translation of this book at short notice.

***Rohana Hettiarachi***  
**Executive Director**  
**PAFFREL**

## Forward

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It should be mentioned that this publication of judicial decisions on elections in Sri Lanka prepared by Attorney-at-Law, Mr Jagath Liyanarachchi, at the request and support of PAFFREL, is a social necessity and of timely importance. It is a clear fact that the future of a democratic country is shaped by elections/polls, in which people use the franchise as part of their sovereignty. The election process must be free and fair. For that, the Constitution of Sri Lanka and the Presidential Elections Act, the Parliamentary Elections Act, the Provincial Councils Elections Act, the Local Authorities Elections Ordinance and the Referendum Act contain guidelines and legal procedures to be followed. Violating or exceeding those provisions amounts to hindering the public will to be expressed appropriately and causes distortion of public opinion. In such cases, a citizen or a candidate can proceed to remove the unfit public representative by proving due facts before the court that are also provided by the provisions of respective legislations. A by-election is also an optimal democratic method to allow for the appointment of a suitable representative. Since 1931, there have been many cases and higher court decisions on election petitions, by-election petitions, and matters related to election laws. Those decisions are valuable sources for studying democratic principles and the rule of law.

In Sri Lanka, it is observed that there is very little attention paid to this, even in the field of lawyers, and because of this, there have been cases where the clients have not received proper advice in the related court proceedings. The facts and legal provisions of the election judgments are valuable and attractive to citizens, political parties and candidates, civil organizations and election observation organizations, lawyers and law students, and all those interested in democracy. The book provides valuable assistance for democratic



representatives to understand and actively contribute to an election. The PAFFREL, led by Mr Rohana Hettiarachchi, the organisation's executive director, for drawing attention to this initiative, and Attorney-at-Law Mr Jagath Liyanarachchi for compiling this publication deserve the tribute for designing and presenting such a challenging task of unveiling complex information of judicial decisions in a simple and easy-to-understand manner.

**Nimal G. Punchihewa, Attorney-at-Law**  
**Chairman - Election Commission of Sri Lanka**

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**Message from Mr. Mahinda Deshapriya,  
the former  
Chairman of the Election Commission**

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Legal provisions relating to elections are contained in the Constitution and in Acts relating to elections and polls. Apart from that, new legal positions have been made by various judicial decisions given in connection with the elections. Those court decisions' contribution to the progress of election processes is enormous. It is a unique feature that the judgments issued at different times have focused on matters such as the methods required to conduct polls in a free, fair, and credible manner and the need to regulate election campaign expenses about which there is an ongoing societal discourse. These are significant discussions to protect the integrity of an election.

Although the Election Commission and various interested parties have limited amounts of information about judicial decisions related to elections, the absence of a compiled publication of all such significant judgments is a problem that has been observed for a long time. As a solution, I see the publication of the book "Judicial Decisions Related to Elections" edited by Jagath Liyana Arachchi, Attorney-at-Law with PAFFREL, fulfilling a need of the time. We are grateful to the PAFFREL organization for that and to Jagath Liyanaarachchi, Attorney-at-Law, who authored this book.

There are several stakeholders involved in the polling of our country. The citizens are the core. The roles of citizen, elector and voter are brought to life with different meanings. The competing candidates, political parties and independent groups, the Election Commission and its officials, and the government officials engaged in election duties, including election officers and the police, support services, and the media, have their respective roles. Through this publication, we can find solutions to many problems to be encountered during the said process.

According to the popular definition of political parties, those organizations act to obtain government power based on the people's will and thereby implement their organisation's policies.

At present, it is observed that a significant number of these political parties are putting more weight on the aim of gaining power. However, if political parties operate as organizations with more advanced attitudes and improved internal democracy, standing up for the common people's aspirations, particularly in this era where it is essential to focus on the goal of achieving social justice for all citizens beyond the intent of merely gaining the ruling power and establishing a government, whoever holds power, they will be able to act in a way that is not unfair to others. The main objective of judicial decisions in these cases is to create an environment in which democratic practice is more and more established during the elections. A person who analyses these judicial decisions better ascertains how justice can be done for all through the administration of justice. However, it will be challenging to reasonably fulfil the people's wishes until political parties and citizens move away from thinking that all people get power to the concept that justice should be ensured for all. Justice for all the people will be served only when the citizens of the political parties understand this absolute truth.

Thus, this publication titled the judicial decisions related to the elections is a vital book that can provide precedents for the political parties, election officials and all those who study political science as well as any citizen interested in elections. I firmly believe that Mr Rohana Hettiarachchi, the Executive Director of PAFFREL and his team, for initiating this timely undertaking unhesitatingly and Mr Jagath Liyana Arachchi, Attorney-at-Law, in my opinion, the most suitable person to compile this publication, deserve the appreciation and respect of everyone associated with the aforementioned election processes and everyone who stands for a better country.

**Mahinda Deshapriya**  
**Chairman, Dilimitation Commission**  
**Former Chairman, Election Commission**

## Author's Note

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The election can be called the real festival of democracy. A democratic governing system cannot be sustained without elections. Elections at regular intervals as well as the integrity of those elections are crucial indicators of the democratic existence of a country. The matters related to holding elections include the registration of political parties, preparation of an election such as accepting nominations, election campaign activities and submitting election petitions after an election. It also provides for the removal of elected public representatives and the filling of vacancies when arising a need.

It is common for the parties dissatisfied with the decisions to seek remedies from the courts when a party acts contrary to the legal frameworks concerning such events related to an election. In such proceedings, the decisions given by the courts clarify the unclear situations of the law, and in some cases, citizenship rights are interpreted broadly. Further, such decisions can also be considered strong precedents regarding an election.

Therefore, elections and judicial decisions related to elections are important for political parties, election management officials, election observers and civil activists.

In 1931, Sri Lankans received universal suffrage, and since the first election was held, many election-related judicial activities have taken place. Some court decisions have been included in the New Law Reports and Sri Lanka Law Reports, but some court decisions have not been included in those reports. However, the laws and rules related to elections are also amended from time to time, and the opinion of the courts also changes accordingly from time to time.

Even though the reported cases have been decided, there has not been a compiled document in recent times that researchers can easily use.

This book is available to you based on the decision made by the PAFRAL organization to compile such a book as the leading election observation institution on the island and a national organization dedicated to free and fair elections.

This book consists of 19 chapters, and the case decisions are described in the following chapters are included in the first chapter; the second chapter describes the laws and judicial affairs related to the elections in Sri Lanka. From chapter three to chapter 18, a detailed description of the legal state of affairs pertaining to decisions under each category related to the elections issued by the Supreme Court and the Court of Appeal has been explained. Before describing the judgments, a brief description of the legal situation in the relevant field has been included to create more understanding and convenience for the readers. Chapter 19 describes the judicial interventions made by the PAFRAL as an organization in various cases as an integral part of its mandate to ensure a free and fair election. Finally, a list of judgments from the Supreme Court and the Court of Appeal related to the election process has been included.

I did not expect these chapters to criticize legal issues, processes, or judicial decisions. This book was compiled exclusively as a resource book with relevant laws and judicial decisions for those who are interested in and want the subject to be referred.

In compiling the book, the primary task was identifying the court decisions related to the election. To this end, the assistance and cooperation extended by the Attorney-at-Law, Mr Nimal Punchihewa, the Chairman of the Election Commission, Mr Mahinda Deshapriya, the former Chairman of the Election Commission, and Mr

M.M. Mohammed, a member of the Election Commission, should highly be appreciated. Also, I would like to express my special thank to the Commissioner General of the Election Commission, Mr Saman Sri Ratnayake, Additional Election Commissioner, Mr BPC Kularatne and Ms Tania Lakshani de Alwis, who helped in providing the judgments and additional documents that were not available in reports. I am also thankful to the Centre for Monitoring Election Violence and the Centre for Policy Alternatives for their assistance in this work.

I would like to thank PAFFREL Executive Director, Rohana Hettiarachicha for inviting me to compile this book and PAFFREL members Sujeewa Gayanath and Upekshi Fernando for making proper coordination and Niluka Perera for the printing layout of this publication.

**Jagath Liyan Arachchi**  
**Attorney-at-Law**



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## Chapter Two

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### **Legal background related to elections in Sri Lanka**

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The purpose of this chapter is to describe the legal background affecting the elections. This chapter describes the evolution of Sri Lanka's election law, the legal provisions related to various elections and polls, and the nature of litigation pertaining to elections and polls.

#### **2.1. Evolution of Election Law in Sri Lanka in Brief**

The first poll in Sri Lanka, known before 1972 as Ceylon, was recorded in 1866. Those were the polls to elect members for the Colombo and Kandy Municipal Councils. Then in 1867, an election was held to elect members for the Galle Municipal Council (Vithanavasam. 2016, 73). Colombo and Kandy Municipal Councils were established under Act No. 17 of 1865. (Local Government Reform Commission Report, 2000, 11).

The first election for the legislature was held on November 16, December 12 and 13, 1911, according to the constitutional reform prepared under the recommendations of the McCallum Commission (Alawattage, 2014, 14). Only a limited number of men got the chance to vote in this election. The relevant legal provisions for the election were included in the Constitution itself.

A turning point in Sri Lankan election history is the 1931 Ceylon (State Council) Order-in-Council 1931, known as the Donoughmore Constitution, passed on the report of the Donoughmore Commission. The revolutionary provision made by it was universal suffrage. Also, a provision was made to elect a group of 50 members for the Constituent Assembly. Also, provisions regarding the qualifications and disqualifications of a member were

included in this Constitution (Articles 8 and 9). Furthermore, the procedure for conducting the election was included in the Ceylon (State Council Elections) Order-in-Council, 1931. The Ceylon (State Council Elections) Order-in-Council 1931 can be called the first law dedicated to an election in Sri Lanka.

Later, the most crucial legal provision added to the electoral law was the Ceylon (Constitution) Order-in-Council 1946, known as the Solebury Constitution. The number of the House of Representatives and the qualifications and disqualifications of a member were specified by that Constitution.

With universal suffrage in 1931, the need to register voters arose, and for that, the Ceylon (Electoral Registers) (Special Provisions) Order-in-Council, 1946, was enacted as a separate law.

The subsequent legal framework considered to be one of the most critical milestones in the history of electoral law is the Ceylon (Parliamentary Elections) Order-in-Council, 1946. Ceylon (State Council Elections) Order-in-Council, 1931 with related amendments and Ceylon (Electoral Registers) (Special Provisions) Order-in-Council, 1946 operated until such time repealed by the Ceylon (Parliamentary Elections) Order-in-Council, 1946 and created the position of Election Commissioner for the parliamentary elections. According to this law, responsibilities were assigned to specific officials to conduct elections. Also, this law contained detailed legal provisions such as the qualifications of a member of parliament, manner of voting, nominations, political parties, and election petitions. Although some parts of this law were amended by the Parliamentary Elections Act No. 1 of 1981, in the case of *Dilan Perera v. Rajitha Senarathne* (*Dilan Perera v. Rajitha Senarathne* (2000) 2 Sri LR.79), the Court of Appeal Justice, Hector Yapa stated that some of the provisions of the Ceylon (Parliamentary Elections) Order-in-Council, 1946 still in force.

Also, with the passing of the Local Government Elections Act No. 53 of 1946, the powers to conduct local authorities polls were also assigned to the Election Commissioner. This Ordinance is in force to date, undergoing various amendments.

Accordingly, a parliamentary election department under an election commissioner to conduct parliamentary elections and a local government election department under a commissioner to conduct local government elections operated. On October 1, 1955, both departments were merged, and the election department was established. (Herath, 2016,190).

In 1972, the new republican Constitution was adopted, which removed the members appointed by the governor and included provisions for all members to be elected by popular vote.

However, the New Republic Constitution of 1978 was a constitution that made a significant change in the electoral system. In particular, the First-Past-The-Post (FPTP) system was replaced by the proportional representation system, which was then amended to the preference system through this Constitution. Also, this constitution introduced a new election in the name of the referendum and presidential elections by introducing an executive presidency. Later, with the introduction of provincial councils by the 13th constitutional amendment in 1987, the provincial councils elections were added to the Sri Lankan electoral system. The constitution also stated that the parliament should pass the relevant laws to hold elections.

In 1980, the District Development Council Elections Act to hold Development Councils made legal provisions for an election held only once in Sri Lanka. With the introduction of Provincial Councils, District Development Councils were abolished.

The Parliamentary Elections Act, No. 1 of 1981, was introduced to conduct parliamentary elections in



accordance with the proportional representation system introduced by the 1978 Constitution. Also, the new constitution introduced the Presidential Election Act No. 15 of 1981 and the Referendum Act No. 7 of 1981, respectively, to conduct the presidential elections and referendum. Likewise, the Local Authorities Elections Ordinance was also amended in line with the proportional representation system. Also, in 1987, the Provincial Council Elections Act No. 2 of 1988 was introduced to conduct provincial council elections through the 13th Constitutional Amendment.

The introduction of the Election Commission through the 17th Amendment to the Constitution in 2001 is a unique step in the electoral law. Accordingly, an independent agency was established to conduct elections.

Although it was included in the Constitution in 2001, the idea of the Election Commission was first mentioned in the Government Constitution Proposal published by the Ministry of Constitutional Affairs in 1997 (Liyana Arachchi, 2021.49).

In 2001, the Constitution provided for the Election Commission, but the Election Commission was established only in November 2015.

At that time, without an Election Commission, the Election Commissioner, who covered the duties of the Commission, conducted three presidential elections, four parliamentary elections, 18 provincial council elections and five local authorities elections in a period of 14 years from 2001 to 2015 (Dissanayake and Liyana Arachchi, 2019,51). Although the Elections (Special Provisions) Act No. 14 of 2004 made the legal provision making the identity document with a photograph mandatory for voting, it was implemented in practice as a result of the settlement in the Court of Appeal case of PAFFREL v. Election Commissioner (PAFFREL v. Dissanayake- C.A. No 176/2006- C.A.M.16.03.2006).

Another important amendment to the electoral law was the amendment to the Local Government Elections Ordinance to make 30 per cent youth representation mandatory for nominations. The amendments were made by the Local Authorities Elections (Amendment) Act No. 25 of 1990. That provision was removed by the Local Authorities Elections (Amendment) Act No. 22 of 2012, which was added to the Local Authorities Elections Ordinance.

The local government elections held in the proportional representation system since 1978 was replaced with a mixed electoral system combining the proportional and divisional systems by the Local Authorities Elections (Amendment) Act No. 22 of 2012. Initially introduced for Local Authorities Elections, this system was also introduced to Provincial Councils by the Provincial Council Elections (Amendment) Act No. 17 of 2017.

After that, a special amendment added to the electoral law was the mandatory 25 per cent representation of women in local government bodies, for which legal provisions were made by the Local Government Elections (Amendment) Act No. 16 of 2017. The Provincial Council Elections (Amendment) Act No. 17 of 2017, which made these changes for the local government elections, was also introduced to the provincial councils.

If the names of citizens are not included in the voter list, they cannot vote, and because the voter list is prepared only once a year, even if youth attain 18 years, in some cases, young people are deprived of their right to vote. To avoid this situation, legal provisions were made by the Registration Electors (Amendment) Act, No. 22 of 2021. Citizens who turn 18 years of age will have the opportunity to enter their names in the supplementary list of the electoral registry from February 1st to May 31st, June 1st to September 31st, and from October 1st to January 31st of the following year.

## **2.2. Key laws related to the elections**

Several laws relating to an election are in use. Those include;

### **The Constitution**

Article 4(e) of the Constitution states,

“the franchise shall be exercisable at the election of the President of the Republic and of the Members of Parliament and at every Referendum by every citizen who has attained the age of eighteen years and who, being qualified to be an elector as hereinafter provided, has his name entered in the register of electors.”

Also, the XIII chapter of the Constitution is dedicated to the legal provisions regarding the referendum.

Likewise, the XIV chapter of the Constitution is devoted to the legal provisions related to the franchise and elections. In that chapter, the rights of a voter, deprivation of franchise, eligibility to be elected as a Member of Parliament, disqualifications for election as a Member of Parliament, disqualifications for election as President, voting shall be free, equal and secret, the election of the President, Delimitation Commission, electoral divisions, Proportional Representation, Election of Members of Parliament based on the total number of votes received in a general election, punishment for sitting or voting in Parliament being a disqualified member to be so. Also, Article 101 of the Constitution states that Parliament should make arrangements regarding parliamentary elections. Similarly, Article 31(5) of the Constitution states that the Election Commission should conduct the Presidential Election, and the Parliament should pass the laws for that. Article 87 of the Constitution states that the Election Commission should conduct referendums, and Parliament should formulate laws related to referendums. Further, Article 154 of the Constitution

states that the Parliament should make legal provisions related to holding elections to appoint members for the Provincial Councils.

Also, Chapter XIVA of the Constitution is dedicated to the provisions of the Election Commission. The Commission's composition, powers and duties are described in this chapter.

### **Parliamentary Elections Act No. 1 of 1981**

This act has made the legal provisions related to holding parliamentary elections according to the powers vested in the Parliament according to Article 101 of the Constitution. Also, this Act repealed the provisions of the Ceylon (Parliamentary Elections) Order-in-Council of 1946. Provisions relating to the declaration of an election, acceptance of nominations, election campaigning, election-related corruption offences and illegal acts, holding of elections, postal voting, counting of the votes, the release of results, and provisions relating to petitions contained in the Act.

### **Presidential Elections Act No. 15 of 1981**

This act includes the legal provisions related to the election of the "Executive President" of the Republic as stated in Chapter VII of the Constitution. The legal provisions relating to the holding of a presidential election, such as the declaration of an election, acceptance of nominations, election campaign activities, provisions on election-related corruption offences and illegal acts, conduct of elections, postal voting, counting of votes, issuance of results, and provisions on petitions are contained in this Act.

### **Provincial Councils Elections Act No. 2 of 1988**

This Act has made the necessary legal provisions for conducting polls for the election of members for the Provincial Councils established by Chapter XVIIA of the Constitution and Act No. 42 of 1987. Legal provisions related to Provincial Councils polls, such as declaration of the election, acceptance of nominations, election campaigning, election related corruption offences and illegal acts, the conduct of elections, postal voting, counting of votes, issuance of results, and provisions regarding election petitions are contained in this Act. Provisions were made under this Act to hold elections in the proportional representation system at the beginning. Still, by the Provincial Council Elections (Amendment) Act No. 17 of 2017, provisions have been made to hold the Provincial Council elections in a mixed system.

### **Local Authorities Elections Ordinance (Chapter 262)**

Pradeshiya Sabhas established by Pradeshiya Sabhas Act No. 15 of 1987, Twon Councils established by Town Councils Ordinance (Chapter 255), the Municipal Council established by the Municipal Council Ordinance (Chapter 252) makes legal provisions for the election of members to local authorities established by this Ordinance.

The Local Authorities Elections Ordinance was passed as an Order-in-Council in 1946 and has now been much revised from its original form. It contains relevant legal provisions connected to elections of local government authorities such as the declaration of an election, acceptance of nominations, election campaigning, election-related corruption offences and illegal acts, holding of elections, postal voting, counting of votes, issuance of results, and election petitions.

### **Referendum Act No. 7 of 1981**

This act makes the legal provisions related to holding referenda as described in Chapter XIII of the Constitution. This Act contains the legal provisions related to the announcement of a referendum by the President, the holding of the referendum, the counting of votes, the announcement of the election results, and provisions related to other aspects such as malpractices, acts of corruption and illegal acts.

### **Registration of Electors Act No. 44 of 1980**

Only those citizens who have registered their names in the relevant electoral register can vote for the elections and local government authority polls mentioned in the constitution. Therefore, this Act is a legal provision that plays a crucial role in relation to an election. The provisions related to the registration of electors, including voter qualification, voter registration process, voter list preparation, submission of objections, and voter list certification, are included in this act. Also, sections II and III of the Ceylon (Parliamentary Elections) Order-in-Council of 1946 have been repealed by this Act.

### **1946 Ceylon (Parliamentary Elections) Order-in-Council**

Article 101(2) of the Constitution states that until Parliament by law makes provision for matters relating to parliamentary elections, the Ceylon (Parliamentary Elections) Order-in-Council 1946, as amended from time to time, shall subject to the provisions of the Constitution, *mutatis mutandis*, apply.

Accordingly, the Parliamentary Elections Act No. 1 of 1981 and the Registration of Electors Act have removed certain parts of the Ceylon (Parliamentary Elections) Order-in-Council 1946. Also, certain sections have been amended by the Ceylon (Parliamentary Elections) Order-in-Council (Amendment) Act No. 36 of 1984.

In the case of *Dilan Perera v. Rajitha Senaratne*, Justice Yapa stated that this Act continues to be a part of our law.

### **Penal Code - Chapter 19**

Chapter IXA of the Penal Code is devoted to detailing “offences relating to elections”. Accordingly, bribery in connection with an election (Section 169(B)), undue influence at elections (Section 169(C)), personation at elections (Section 169(D)) and making false statements in connection with an election (Section 169(G)) of the Penal Code defines as criminal offences. In addition, the Penal Code states that failing to keep election accounts of expenses incurred in connection with an election required by any law (Section 169(H)) is an offence.

### **Jurisdictions of litigation related to elections and their evolution**

Legal cases relating to an election come before the courts in several forms. Those include;

#### **Criminal cases**

Prosecution of accused persons for criminal offences of election corruption, illegal acts and electoral malpractices during the election period will be conducted in the Magistrates' Courts with the approval of the Attorney General.

In addition to that, a government official who does not comply with the rules issued by the Election Commission during an election can be prosecuted for committing an offence. Also, people who misappropriate public property in connection with an election can be prosecuted for misappropriation under the Offences Against Public Property Act No. 12 of 1982 and under the Penal Code. Cases assigned under the Offences Against

Public Property Act relating to crimes committed against public property are conducted in a High Court.

### **Presidential Election Petitions**

Provisions regarding filing presidential election petitions challenging the appointment of a candidate who wins a presidential election are contained in part VI of the Presidential Elections Act No. 15 of 1981. Accordingly, the power to hear presidential election petitions rests with the Supreme Court.

### **Parliamentary Election Petitions**

Part VII of the Parliamentary Elections Act No. 1 of 1981 is dedicated to legal provisions relating to parliamentary election petitions. Also, by the fourth schedule of the said Act, the rules regarding the parliamentary election petitions have been introduced. The Court of Appeal has jurisdiction to hear parliamentary election petitions.

### **Provincial Council Election Petitions**

Part VII of the Provincial Councils Elections Act No. 2 of 1988 is devoted to legal provisions relating to election petitions relating to Provincial Council elections. Section 111 of the Act states that the procedure and practice of provincial council election petitions shall be in accordance with the rules made by the Supreme Court under Article 136 of the Constitution.

The Court of Appeal has the jurisdiction to hear provincial council election petitions.



### **Local Authority Election Petitions**

Part IVA of Chapter 262, the Local Authorities Elections Ordinance, is devoted to legal provisions relating to local authorities election petitions. Section 82(2)(h) of the Ordinance states that the procedure and practice of Provincial Council election petitions shall be in accordance with the rules made by the Supreme Court under Article 136 of the Constitution.

Jurisdiction to hear local authorities election petitions lies with the Provincial High Court of the area to which the relevant local government authority belongs (Section 82P).

### **Writ orders**

After an election, writs can also be obtained to challenge the appointment of an elected public representative. Also, in the event that the acceptance of the nominations is rejected, it is seen that a lawsuit is filed for writs to annul the decision of the Returning Officer and obtain judicial orders to accept the relevant nominations. Petitions for such writs are filed in the Court of Appeal.

### **Fundamental Rights Petitions**

Fundamental rights lawsuits are filed alleging that their fundamental rights have been violated due to the actions or omissions of election officials or certain ministers. Fundamental rights lawsuits are also seen in connection with the delay of elections and the negligence of the officials responsible for the actions related to the elections. The Supreme Court has the power to hear fundamental rights petitions under Article 126 of the Constitution regarding violations of the fundamental rights guaranteed under Chapter III.

## Chapter Three

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### **Voting becomes a fundamental right**

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This chapter aims to clarify the relationship between the constitutionally guaranteed fundamental rights and the franchise through the constitutional provisions and some decisive cases regarding the relationship between the fundamental rights granted to the citizens by the Constitution and the right to vote. This chapter contains a summary of the fundamental rights guaranteed by the Constitution and the judgments given by the Supreme Court regarding the fundamental rights and the fundamental rights petitions related to the election process.

#### **3.1. Fundamental Rights**

The fundamental rights enjoyed by the citizens are described in Chapter III of the Constitution.

Article 4(d) of the Constitution states that “the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of government and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided.”

Also, Article 17 of the Constitution states that every person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement by an executive or administrative action of a fundamental right to which such person is entitled under the provisions of this Chapter.

However, when we examine the fundamental rights mentioned in Chapter III of the Constitution from Article 10 to Article 14, the fundamental rights mentioned therein can be summarized as follows.

- ❖ Freedom of thought and conscience
- ❖ Freedom from torture
- ❖ Right to equality
- ❖ Freedom from arbitrary imprisonment, detention and punishment and prohibition of retroactive penal laws
- ❖ Freedom of speech and expression
- ❖ Right to information
- ❖ Freedom of peaceful assembly
- ❖ Freedom of association
- ❖ Freedom to form and join a trade union
- ❖ Freedom to manifest his religion or belief in worship, observance, practice and teaching
- ❖ Freedom to enjoy culture
- ❖ Freedom to engage in any occupation, profession, trade, business or enterprise
- ❖ Freedom of movement and choice of residence
- ❖ Freedom to return to Sri Lanka

Thus, it is clear that the “right to vote” is not expressly mentioned as a fundamental right in the fundamental rights chapter of the constitution. Therefore, according to the stated provisions of these fundamental rights, the concession of fundamental rights cannot be sought against a person who does an executive or administrative action to obstruct the right to vote or violate the right to vote. It is a severe crisis for democracy if the citizens cannot seek remedies for violating the right to vote, which is one of the main rights mentioned in the political rights, by an action of the state responsible for protecting the fundamental rights. However, the Supreme Court has given expansive interpretations in the petitions related to the fundamental rights filed in connection with the elections; even though the right to vote is not explicitly stated in the Constitution, the right to vote is protected by the fundamental rights of citizens under the right to express their opinions and to be treated equally before the law. A few such judgments are described in this chapter.

### 3.2. Voting is an expression of opinion

*Karunathilaka and Another v. Dayananda  
Dissanayake, Commissioner of Elections and Others  
(case-1) (1999) 1 Sri LR. 157*

#### **Background**

According to the Provincial Councils Act, No. 42 of 1987, which includes the procedures regarding the Provincial Councils established by Chapter XVIIA of the Constitution, the term of a Provincial Council is five years. The appointment of members for the Provincial Councils is made according to the Provincial Councils Elections Act No. 2 of 1988.

By June 1998, the term of office of the Central Provincial Council, Uva Provincial Council, North Central Provincial Council, Western Provincial Council and Sambaragamuwa Provincial Council had ended. Accordingly, the Election Commissioner decided to call nominations for those Provincial Councils under Section 10 of the Provincial Councils Elections Act. The last date for submission of nominations was 15 July 1998. According to the provisions of the Provincial Councils Election Act, the Election Commissioner fixed the postal voting of those provincial councils on August 4, 1998, and the polling on August 28, 1998.

Despite this, on the day before the postal voting day, i.e. on August 3, 1998, the Election Commissioner informed all the relevant Election Officers by electronic messages that postal voting should not be held. The Election Commissioner did not give a reason for not having the postal vote.

The next day, August 4, 1998, the President declared a state of emergency in accordance with the provisions of the Public Security Ordinance and cancelled the polling

day by issuing an emergency order under Section 5 of the Public Security Ordinance. The Election Commissioner also did not take any action regarding re-conducting the poll. Then the term of the North West Provincial Council expired, and the election commissioner set a date for its polling on 25.01.1999. However, the election commissioner did not set a polling date for the above five provincial councils.

### **Supreme Court Petition**

A fundamental rights petition was filed before the Supreme Court on 9 September 1998 by Varuna Karunathileka, a journalist and a Co-convenor of the Centre for Monitoring Election Violence and Sunanda Deshapriya, a journalist. The petitioners claimed that fundamental rights were violated by arbitrarily stopping postal voting, cancelling the polling date, and not resetting the same. This fundamental rights petition stated the following points;

- ❖ Proclamation of Emergency is an unconstitutional and illegal discretionary act. It is not done in good faith or considering the security situation of the country's five provinces but solely to postpone the five elections.
- ❖ This emergency regulation has illegally encroached upon and usurped the role assigned to the Election Commissioner by the Constitution and the Provincial Councils Elections Act.
- ❖ As the legal effect of these emergency regulations relates to the continued existence of the 5 Provincial Councils, the franchise and Article 12(1) and Article 14(1)(a) of the Constitution, the said Regulations contravene Article 155(2) of the Constitution.

Accordingly, by not holding the election called for by the emergency regulations, the administration and

enforcement of the law guaranteed by Article 12 (1) of the Constitution, and the protection of the law, should be fair and that the respondents have violated the fundamental right and freedom of speech and expression, including expression guaranteed by Article 14(1)(a) of the Constitution. The Election Commissioner, the 12 Returning Officers of the respective provincial council election districts, and the Attorney General were named as respondents in this petition.

### **Petition hearing**

The Fundamental Rights Petition was heard by Chief Justice GPS De Silva, along with Supreme Court Justices Mark Fernando and Gunasekara. An affidavit of the 1st respondent, the Election Commissioner, was filed there.

Accordingly, before setting the election date, a meeting of the recognized political parties was held on 25 June 1998 by the first respondent, the Election Commissioner. In this meeting, the Election Commissioner had stated that the polling for all three provincial councils would be held on the same day. The Inspector General of Police also stated that the necessary security arrangements would be made for the election. Also, in that meeting, the Inspector General of Police had not made any suggestion concerning a problematic situation regarding security.

### **Supreme Court decision**

The judgment prepared by Justice Mark Fernando with the concurrence of Chief Justice GPS De Silva and Justice Gunasekara was announced on January 27, 1999.

Justice Mark Fernando, who announced his decision after considering the issues raised by both parties, first stated whether the President's declaration of emergency could be questioned in the Supreme Court. The Justice noted that this emergency declaration was made using Section

2 of the Public Safety Ordinance, so it was an executive act. As the Supreme Court has the power to question the executive function under Article 126 of the Constitution, the President's declaration of emergency is not covered by the Presidential immunity mentioned in Article 35. Also, the emergency order imposed by the President under Section 8 of the Public Security Ordinance after the declaration of the said state of emergency can also be questioned in court as before. Accordingly, these emergency regulations are not enacted in accordance with Section 5 of the Public Security Ordinance, and the postponement of elections is not a regulation but a kind of suspension notice. The announcement becomes more powerful when there is a threat to national security and public order. However, the respondents have not proved to the court that there was a threat to national security and public order in July or August 1998.

Also, without giving any reason, the Election Commissioner has suspended the postal vote against the law and has not taken any steps to set a new date for the poll postponed by the President's emergency order. The Justice also observed that the election commissioner had the opportunity to hold the polls instead of the polling date suspended by the President's orders issued under emergency regulations. Meanwhile, the Election Commissioner has fixed the North Western Provincial Council elections date. As such, less consideration has been given to the 5 Provincial Councils of which the elections have been postponed. This violates the right to equality in the execution, implementation and protection of the law (Article 12(1)).

The most important part of this judgment is the declaration that the constitutional right to freedom of speech and expression (Article 14(1)(a)) should be interpreted very broadly to include the right of a voter to cast his vote at an election.

Also, Justice Mark Fernando, who stated the facts in his judgment confirming the decision, stated as follows;

*"The silent and secret expression of a citizen's preference between one candidate and another by casting his vote is no less an exercise of the freedom of speech and expression than the most eloquent speech from a public platform."*

Thus, the Justice who allowed the claims made by the petitioner on the recognition of the right to vote as a fundamental right, due to the action of the respondents, the petitioner's right to be treated equally before the law and entitlement to the equal protection of the law as enshrined by the article 12(1) of the Constitution and the fundamental right to freedom of speech and expression including publication protected by article 14(1)(a) as guaranteed by the constitution have been infringed due to the action of the respondents.

Accordingly, the Election Commissioner was ordered to set a date for re-polling after two weeks, and that date should not be longer than three months from the date of the judgment.

It was also ordered that the government should pay Rs. 30,000 as legal fees, while the petitioner did not claim costs.

### **3.3. Election day should be a day for everyone**

*Karunathilaka and Another v. Dayananda Dissanayake, Commissioner of Elections and Others (Enforcement Judgment) (Case No 2) (1999) 1 Sri LR. 183)*

#### **Background**

According to the ruling of the Supreme Court case Karunathilake and others v. Dayananda Dissanayake Election Commissioner and others (SC(FR) 509/98) (1999- I- SLR 157) on January 27, 1999, the election commissioner had to hold the polls for the five provincial councils within three months from that date. Also, the



polling date should be announced within two weeks from the Supreme Court decision date.

Accordingly, the Election Commissioner announced the date April 1, 1999, as the date of the new polling day through a gazette notification on February 8, 1999. The day before the proposed date, i.e. March 31, was Pura Pasalowsaka Poya. Also, the day after the polling day, i.e. 2nd April, was Good Friday. Also, that period was the Hajj pilgrimage season for Muslim pilgrims to Mecca. Accordingly, the Election Commissioner received many requests to change the polling date. Consequently, a petition and affidavit were submitted to the Supreme Court on March 3, 1999, asking whether the polling date fixed by a gazette could be changed.

### **Supreme Court hearing**

Chief Justice G.P. S de Silva, Justice Mark Fernando and Justice Gunasekara heard the petition of the same Justices who previously determined the case. The day after the petition filing, i.e. on March 4, 1999, the matters related to the petition were considered. The Supreme Court adjourned the hearing to March 9, 1999, which ordered the issuing of notices to the general secretaries of all the political parties that had been nominated for the five provincial councils.

### **Supreme Court decision**

Justice Mark Fernando also announced this decision on the concurrence of the Supreme Court Justices, Chief Justice GP, S de Silva and Justice Gunasekara.

That the Election Commissioner shall not act arbitrarily in fixing the date of the election, under the relevant Acts or in accordance with the orders of this Court; Justice Mark Fernando has stated in his decision that the Election Commissioner should be open to some extent

considering all the relevant facts. The judgment states that the convenience of voters should be considered and that the purpose of an election is to enable voters - and as many voters as possible - to exercise their right to vote.

The Justice emphasized Article 104 of the Constitution, which mentions the powers, duties and functions of the Election Commissioner, but that alone does not complete the powers and duties of the Election Commissioner, and due attention should also be paid by the Election Commissioner to the provision that voting should be free, equal and secret according to Article 93 of the Constitution. The Justice said in his ruling that the Election Commissioner has the implied powers and duties required by that statute to ensure that voting is free, equal and secret. Also, there are other constitutional provisions regarding religious freedom, and the Justice said that the Election Commissioner should consider those elements, especially reiterating the State's responsibility to protect the fundamental right guaranteed by Article 14(1)(e) of the Constitution, which states that, every citizen is entitled to the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.

Thus, the court stated that it was not observed that all the available facts were considered by the Election Commissioner in deciding the date of the poll, as stated in the previous judgment, and ordered that the poll should be held before April 27, 1999. The date of the poll should be declared two days from the date that the judgment was announced, i.e. March 9, 1999.

### **Implementation of Supreme Court decision**

The Election Commissioner proceeded to fix the polling date within the time limit of the Supreme Court's decision, and accordingly, April 6, 1999, was fixed as the polling date. On that day, polls were held for Central,

Uva, North Central, Sambaragamuwa and Western Provincial Councils (Provincial Council poll results - Election Commission website).

### **3.4. Interference with voting is a violation of fundamental rights**

*Thavaneethan v Dayananda Dissanayake*  
*Commissioner of Elections and Others (2003)-I Sri LR*  
*74)*

#### **Background**

The background to this fundamental rights petition was a situation that arose in the Batticaloa region during the parliamentary elections held on 5<sup>th</sup> December 2001. At that time, when the war was intense, some areas in Batticaloa district, Vanni district and Trincomalee district were considered un-cleared areas and polling stations were not established in those areas, and the polling stations established in the government-controlled areas were called cluster polling stations for the voters of those areas to cast their votes. Voting was facilitated at the corresponding polling stations. The army had not allowed some voters to go to the cluster polling centres to cast their ballots at the army roadblocks coming from the unliberated areas of Batticaloa district and Wanni district to the government-controlled areas. The army did not prevent voters from the un-cleared areas of Trincomalee district from coming to the government-controlled areas.

Before that, most of the voters in Batticaloa and Vanni districts had voted against the government in the parliamentary elections held in the year 2000, while the majority of voters in the Trincomalee district had voted in favour of the government in the parliamentary elections held in the year 2000.

It was reported that 40,000 voters in the Batticaloa district and 15,000 voters in the Vanni district could not vote due to military actions. Meanwhile, the President, the Prime Minister, the Speaker and the Minister of State for Defense used their votes in a special manner arranged from their residences.

At the time of the parliamentary elections held in 2001, Tavaneethan and his wife were living in the Wakare area of the Batticaloa district. That area was known as an un-cleared area and the polling station for him and his wife to vote was also taken to the government-controlled areas. Accordingly, Tavaneethan and his wife were taken to the government-controlled areas where their polling stations were located in order to cast their votes. Around 10.15 am, they reached the Kajuwatta army road block, where voters from un-cleared areas to government-controlled areas are checked. About 500 other voters were at the military roadblock at that time. The military officials stated that they had not yet received instructions from their superiors to allow them to move forward through the army barrier. They waited for permission but did not give it, so they returned home at around 2.30 pm. Accordingly, the group, including Tavaneethan could not vote in the parliamentary elections.

### **Fundamental Rights Petition**

A fundamental right petition was filed in the Supreme Court alleging that by not allowing the Kajuwatta army to pass through the security cordon and vote and thus not being able to vote, the fundamental rights guaranteed by Article 12(1) (equality before the law) and Article 14(1)(a) (freedom of expression including publication) the freedom of movement and of choosing his residence within Sri Lanka) of the Constitution have been violated. The Election Commissioner, the Returning Officer of Batticaloa, the Army Commander, the Commander of the 23rd Brigade, who was the head of the Army in Batticaloa

and the Attorney General were respondents in this petition. Eight petitioners filed fundamental rights petitions in the Supreme Court through three petitions similar to Thavaneethan's petition. All the petitions were heard together.

### **Petition hearing**

Supreme Court Justices Mark Fernando, Smile and Wigneswaran conducted the hearing of the Fundamental Rights Petition. It was observed that at least 40,000 voters in the Batticaloa district of 280,000 and at least 15,000 of the voters in the Vanni district of 210,000 were unable to cast their votes due to military activities. It was also observed that the decision taken by the third respondent Army Commander to close the military roadblock was not based on a genuine security need but on political grounds.

Although the court instructed the respondents to submit the communications made to justify the closing of the military roadblocks, such documents were not submitted to the court.

Also, the petitioners had submitted many newspaper reports related to these incidents to the court. Thereby, the statements made by various parties and the respondents' responses regarding these incidents were given. An election observation team of the PAFFREL, a national-level election observation institution, had met the third respondent Army Commander and criticized this.

The third respondent stated on behalf of the army commander that a large number of army personnel had to be deployed for the security of the election and that the LTTE members came to the government-controlled areas and closed these roadblocks to stop them from disrupting the election.

### Supreme Court decision

Justice Mark Fernando had prepared the decision based on the concurrence of Supreme Court Justices Smile and Wigneswaran. The Justice giving the verdict stated that;

*"The proved infringements were in themselves serious. The number of voters affected was so large that the elections in the Batticaloa and Vanni districts were neither free nor fair. The decision-making processes which resulted in those infringements were shrouded in secrecy, haste and bad faith. The infringements took place at a time when there was a serious erosion of public confidence in the integrity of the electoral process, and when it was extremely important to ensure that elections were free and fair, particularly in the "uncleared" areas - because citizens living in those areas needed reassurance, if peace and national reconciliation were to become realities, that elections would be truly democratic, that fundamental rights would be respected and protected, and that judicial remedies would be available for wrongdoing. In that context, the infringements were a national disaster."*

The judgment primarily considered whether the respondents' conduct had violated the petitioners' right to equality during the election. Taking into account the fact that these petitioners were treated differently from the voters coming to the government-controlled areas of Trincomalee district, special persons, including the President, were allowed to vote in a special manner by going beyond the Parliamentary Elections Act, and these petitioners were not allowed to vote; it was held that the right to equal protection before the law of the petitioners guaranteed by Article 12(1) of the Constitution had been violated. Also, the Supreme Court declared that the government could only limit the freedom of movement in Sri Lanka, guaranteed to the petitioners by Article 14(1)(g) of the Constitution, in accordance with the provisions of the Constitution and the respondents of this case has gone beyond this limit and violated the freedom

of movement and of choosing his residence within Sri Lanka.

The Supreme Court decision in *Karunathilake v. Dayananda Dissanayake* pointed out that the right to vote is covered by the fundamental right to the freedom of speech and expression, including publication guaranteed by Article 14(1)(a) of the Constitution. About 55,000 voters in Batticaloa and Vanni districts could not vote due to the army's actions in this election. It was stated that the first respondent violated the right to freedom of speech and expression guaranteed by Article 14(1)(a) of the Constitution as the first respondent, the Election Commissioner, did not allow them to re-vote.

Accordingly, it was held and stated that the 1st and 3rd respondents had violated the fundamental rights provided by Article 12(1), 14(1)(a) of the Constitution. The 3rd respondent had violated the fundamental rights guaranteed by Article 14(1)(h) of the Constitution.

Therefore, the court ordered the government to pay three hundred thousand rupees in total and one hundred thousand rupees each for the three petitioners, and the third respondent army commander to personally pay 30,000 rupees to each petitioner and thus 90,000 rupees in total for all three petitioners, and further, the court ordered the first respondent election commissioner to pay one thousand rupees as nominal compensation to the petitioner in the first petition. All these sums were also ordered to be paid before 31st May 2003.

**3.5. The Supreme Court cannot give relief of fundamental rights in relation to the acts of the legislature.**

*Mohamed Hussain Hajiar Muhammad and 18 others v. Election Commission of Sri Lanka and Others SC (FR) 35/2016- SCM 15-12-2017*

**Background**

The Local Government Amendment Act No. 22 of 2012 made many amendments to the Local Government Elections Act. Accordingly, a mixture of the two systems of first-past-the-post (FPTP) and proportional representation was introduced for the local government elections. Therefore, specific divisions of each local government should be identified. For that, according to the Act, a delimitation committee should determine the boundaries of the division. Many objections were raised to the recommendations of the original Delimitation Committee, and thus a Delimitation Review Committee was appointed. The last election in many local government bodies was held in 2011, and by 2016, the tenure of those local government bodies had ended. Accordingly, the council's powers were assigned to the secretaries and commissioners of those local government institutions. In this situation, a group of incumbent local council chairpersons filed a fundamental rights case due to the indefinite postponement of the local government elections, alleging that their fundamental rights had been curtailed by not having the opportunity to get re-appointed as local government members and hold the office of chairmanship.

**Fundamental Rights Petition**

There were 18 petitioners in this fundamental rights petition. All of them were former chairpersons or vice-



chairpersons of local government bodies in the Galle and Matara districts. Twenty-four respondents were named in the petition. The Election Commission was named as the first respondent. Respondents 2 to 4 were the Chairman and members of the Election Commission. The 5th respondent is the Minister in charge of Local Government. Respondents 6 to 23 were secretaries of local government bodies. The 24th respondent was the Attorney General.

As the tenure of the local government bodies was to end on January 1, 2015, according to section 25 of the Local Government Elections Ordinance, the petitioners had pointed out that a poll should be held within six months before the end of the term of office of a local government body. Accordingly, the Election Commission has not conducted the polling. The petition also claimed that they were looking forward to appearing for those polls. The petition highlighted that neither the second respondent (Mahinda Deshapriya), who was the Election Commissioner before the establishment of the Election Commission (the Election Commission was appointed on 16 November 2015), nor respondents 1 to 4 after the establishment of the Election Commission have acted to conduct this election, and they have acted in excess of the provisions stipulated in Article 103(b)(1) and 104(b)(2) of the Constitution to be read with Sections the provisions of the Municipal Council Ordinance and/or the Pradeshiya Sabha Act and/or the Local Authorities Elections Ordinance and the petitioners contended that such act and/or omission was arbitrary, unjust and illegal and that the said action was illegal and constituted a continuous violation of the fundamental rights of the petitioners as guaranteed by Article 12(1) of the Constitution. Accordingly, the petitioners pleaded in their petition;

(a) to issue a declaration that the fundamental rights of the petitioners as guaranteed by Article 12(1) of the Constitution have been violated or infringed by the

Election Commission as the first respondent and/or respondents 2 to 4 and/or the Government;

(b) as taking all necessary steps to conduct polls for the local government as prescribed by law by the 1st respondent, the Commission, and/or by the second and forth respondents and/or by the Government has not been accomplished and thus to issue a declaration that the fundamental rights of the petitioners guaranteed by Article 12(1) of the Constitution have been violated and/or continue to be violated,

(c) to issue an order directing the Election Commission as the 1st respondent and/or the 2nd to 4th respondents and/or the Government to take all necessary steps to conduct the polls for Municipal Councils and Pradeshiya Sabhas as prescribed by law,

(d) to issue a statement that by authorizing respondents 6 to 23 to exercise and perform the rights, privileges, powers, functions and duties of the Chairpersons and Vice-Chairpersons of Municipal Councils and Pradeshiya Sabhas by the 1st respondent, the Election Commission, and/or by the 2nd to 4th respondents or by the omission and/or refusal of the Government; the fundamental rights of the petitioners guaranteed by Article 12(1) of the Constitution have been violated and/or continue to be violated.

### **Petition hearing**

The petition was convened on April 4, 2016, to hear the demands. Accordingly, the Supreme Court granted leave to proceed to hear the petition against the 1st respondent, the Election Commission, regarding the violation of the petitioner's fundamental rights. Later, seven voters of the Southern Province also joined this petition as intervening petitioners, and they were added as respondents from 25 to 31.

One of the primary arguments of the respondents was that the Local Authorities Elections (Amendment) Act No. 22 of 2012 had included significant amendments to the Local Authorities Elections Ordinance, and the petitioners have filed this case based on the provisions removed by the said Amendment Act, and they have failed to refer to the relevant Amendment Act No. 22 of 2012. Also, since no relief has been sought from the 5th respondent, the Minister, who contributed to these amendments, a preliminary objection was raised to dismiss this petition. However, since the primary allegation raised by the petition is about the non-holding of elections affecting the voting rights of the people, the basic objection was rejected, and the petition was heard.

The 5th respondent stated in detail that according to the Amendment Act No. 22 of 2012, the divisional delimitation of the local government bodies has been started, but the process has not been completed. Also, the 2nd respondent stated that there are technical errors in this amendment act, and the 5th respondent has informed the Minister that those should be amended.

### **Supreme Court decision**

The petition was heard by Supreme Court Justices Anil Gunaratne and Nalin Perera, along with Chief Justice President Counsel Priyasath Dep. The Chief Justice announced his decision on December 5, 2017, with the concurrence of the other Justices.

The Justice stated that there is no provision in the law to extend the period indefinitely and that universal suffrage means the right to vote, and that right should not be denied to the citizens, as the members of a local government are elected for a period of 4 years. At the end of that period, the citizens expect to elect new members, and that right should not be revoked. The Justice said that although the Amendment Act No. 22 of 2012 was passed in the year 2012, it appears that the provisions related to

the amendments have not been completed so far, observing that no reason has been given for the delay and said that the rights of not only the petitioners but also the voters are being violated. Also, according to the facts presented, the Justice stated that the election could not be held until the provisions related to the Amendment Act were completed and said that the Minister and the parliament are responsible for that. It was stated that the Supreme Court's powers regarding fundamental rights do not extend to the legislature, and the petitioners have not sought any relief from the Minister. Accordingly, the Chief Justice declared that the 1st respondent had not committed any violation of fundamental rights and said that the fact that the fundamental rights of the petitioners had been violated by the delegation of powers to the secretaries of the local government bodies as indicated in paragraph e of the petition, the court ordered all the respondents to take the necessary steps to hold the election as soon as possible.



## Chapter Four

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### Identification of the Voter

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Only one ballot paper is issued to each voter. Therefore, identifying the identity of the voter is very important. It is directly related to the free and fair nature of an election. This chapter describes the writ petitions submitted to the Appeal Court regarding the existing legal provisions for voter identification and the responsibility of the authorities to implement those provisions.

#### **4.1. Legal provisions regarding voter identity verification**

Using a voter's ballot by other persons in an election is a significant obstacle to a free and fair election. The best way to avoid this situation is to use an identification (ID) card to verify the voter's identity. However, until 2004, it was not mandatory to present an identity card to identify the voter.

Election officials and election observers were interested in the damage caused to the integrity of the election and the violation of the citizens' voting rights. Special attention was also paid to the special parliamentary committee appointed for election reforms. It was recommended that the identity card should be used in two steps.

- i. to be started from a date in 2005 only after the issuance of National ID cards to all eligible persons, counting as voters in the amendment of the voter list shall be done only after presenting the number and date of issue of the National ID card and taking steps to note National ID card number in front of each voter's name.
- ii. Issuance of ballot papers to all voters, including postal voters, only on producing a National Identity Card or such identity card with a photograph bearing the National Identity Card number.

Implementation of the same from a day after the registration mentioned above is completed, and copies of the voter lists are issued or collected by the Election Commissioner. (Page 6. Parliamentary Journal No. 24)

Following the recommendations of this special committee, the Parliament passed the Elections (Special Provisions) Act, No. 14 of 2004.

#### **4.2 Elections (Special Provisions) Act, No. 14 of 2004**

This Act legislated the legal provisions to verify the identity of a valid voter through a valid identity document before issuing a ballot paper to a valid voter in parliamentary elections, presidential elections, provincial council polls, local government authority polls and referendums (Section 3 of the Act). As stated in Section 4 of the Act, “valid identity document” means any document issued by the Government of Sri Lanka in pursuance of any law for whatever purpose, with which the identity of the holder may be ascertained, and shall include a photograph of a person who does not possess any other identity document, duly certified to be that of such person by the Grama Niladhari or the Estate Superintendent as the case may be, and authenticated by the Divisional Secretary of the respective Divisional Secretary’s Division within which such person resides or by an officer authorized in writing in that behalf by the Election Commission.

From the date of the Speaker's certificate for this Act shall come into operation at the expiry of a period of one year from the date of Certification of this Act as an Act of Parliament in terms of the provisions of the Constitution and accordingly the Election Commission shall satisfy itself that all the administrative arrangements have been made in respect of the issue of identity cards before the expiry of the said one-year period. Section 2 of the Act had given the responsibility to the Election Commission

to publish a gazette confirming that no one authorized to vote has been prevented from using the vote due to the provisions of this Act.

#### **4.3 Voting cannot be exercised without a valid identity card.**

*PAFFREL & Others v. Dayananda Dissanayake & Others - C.A. No 176/2006 C.A.M. 16.03.2006*

#### **Background**

In the year 2006, The minister in charge of local government announced on January 10, 2006, through the Gazette that the term of office of 17 local government authorities would end on April 16, 2006. Apart from that, the tenure of another 272 local government authorities was scheduled to end on April 16, 2006. Several other local government authorities were set to expire in July 2006. One year had already passed since the Speaker's certificate was recorded for the above Elections (Special Provisions) Act, No. 14 of 2004. Nevertheless, the certificate required to be published in the Gazette by the Election Commissioner under Section 2 of the said Act had not been published in the Gazette yet.

During the polls conducted in that situation, the mandatory requirement of presenting a valid identity document to identify a voter when casting a vote provided for by the Elections (Special Provisions) Act, No. 14 of 2004, was irrelevant to that polling.

#### **Writ Petition**

To prevent this situation, PAFFREL's Chairman Kingsley Rodrigo and Deputy Executive Director Rohana Hettiarachchi filed a writ petition before the Court of Appeal on January 31, 2006.



The petition emphasized that the Election Commissioner and the Commissioner of Registration of Persons have not fulfilled their statutory obligations under Section 2 of Act No. 14 of 2004. Accordingly, it was claimed by the petition that the Election Commissioner or the Commissioner of Registration of Persons had not given due consideration for the matter of certificate under Section 2 of the Act to be published in the Gazette to the views of the representatives of the political parties represented in Parliament in respect of the administrative arrangements that have been made for the issue of identity cards and for the matter of receiving a certificate as per Section 2 of the Act on the confirmation that National ID cards have been issued from the Commissioner of Registration of Persons.

The Minister in charge of Provincial Councils and Local Government, Janaka Bandara Thennakoon, the Election Commissioner, Dayananda Dissanayake and the Commissioner of Registration of Persons, H.K. Geethasena were named as respondents 1 to 3, respectively, in this petition.

This petition sought from the Appeal Court; to issue a writ of certiorari quashing the gazette notification issued by the first respondent, Minister of Local Governments on 10 January 2006; to issue a writ of mandamus to the second respondent Election Commissioner and the third respondent Commissioner of Registration of Persons to take the necessary steps under Section 2 of Act No. 14 of 2004, and to issue a writ of mandamus against the 2nd and 3rd respondents to issue a valid identity document which is mandatory for voters as per the law.

Furthermore, the petition requested to stop the activities related to the polling gazette until the hearing of this petition is completed, to prevent the calling of nominations until the hearing of this petition is conducted, and to issue interim orders.

Also, as an interim relief, it was further requested to extend the time of the relevant local authorities until the completion of the hearing of this petition.

### **Hearing of Petitions in the Court of Appeal**

This petition was held before the Court of Appeal Justices K Sripavan and K. S. D. de Abreu. The Election Commissioner filed his defence on March 8, 2006. In section 7 of the said petition, he stated that as stated in section 4 of the Elections (Special Provisions) Act No. 14 of 2004, alternative measures will be taken to provide a "recognized identity card" to confirm the identity of the voters for this local government authority election. Also, the Commissioner of Registration of Persons gave an undertaking that an urgent program would be implemented for the issuance of National Identity Cards.

The petitioners agreed with the said facts, and accordingly, the petition was withdrawn on March 03, 2006.

#### **4.4 Application of the consensus for all other elections PAFFREL & Rohana Hettiarachchi v. Dayananda Dissanayake & another- C.A (Writ) No.356/2008- C.A.M. 28.04.2008**

### **Background**

The Election Commissioner announced through a Gazette notice that on March 8, 2008, nominations should be submitted for holding the Eastern Provincial Council elections. The poll was scheduled for May 10, 2008. However, under Section 2 of the Elections (Special Provisions) Act, No. 14 of 2004, the certificate that should be published in the Gazette by the Election Commissioner (The Election Commission shall, before the provisions of this Act coming into operation, satisfy itself that all the administrative arrangements have been made in respect of the issue of identity cards under

section 14 of the Registration of Persons Act, No. 32 of 1968 to ensure that all persons entitled to vote are not precluded from obtaining identity cards and exercising their franchise, and certify such fact and publish such certification in the Gazette) had not been issued. Accordingly, it was not guaranteed that every voter eligible to vote in the election would be given an accepted identity card. Thus, Rohana Hettiarachichi, the Executive Director of PAFFREL, wrote a letter to the Election Commissioner on April 2, 2008, asking him to ensure that an accepted identity card is provided to every voter. However, he did not get any response from the Election Commissioner. Accordingly, a writ petition was filed in the Court of Appeal to issue an order to issue a recognized identity card to all the voters appearing for the upcoming Eastern Provincial Council polls.

### **Writ Petition**

The Election Commissioner and the Commissioner of Registration of Persons were named as the 1st and 2nd respondents, respectively, in this petition, in which PAFFREL was mentioned as the first petitioner and its Executive Director Rohana Hettiarachchi as the second petitioner.

According to Section 4 of the Elections (Special Provisions) Act No. 14 of 2004, it is mandatory to present an accepted identity card to verify the identity of a voter, and the responsibility of providing that identity card is the responsibility of the second respondent, the Commissioner of Registration of Persons. Similarly, section 2 of the Act states that it is the responsibility of the first respondent, the Election Commissioner, to inquire with the Commissioner of Registration of Persons regarding the issuance of an identity card to each voter and announce that the task has been completed and the time for issuing the announcement will be completed on November 18, 2005. However, it was mentioned in the

petition that the Election Commissioner and the Commissioner of Registration of Persons have failed to fulfil those responsibilities. On a similar issue, the organization referred to the writ petition 176/2006 submitted regarding the local government election held in 2006. It was further stated that the petition was withdrawn because the Election Commissioner promised to provide an alternative identity card for the said polls. However, the petitioners noted that the respondents are not ready to implement the provisions of Elections (Special Provisions) Act No. 14 of 2004 for the upcoming provincial council elections and that they have not received any response to the letter they sent on April 2, 2008, and requested the court; to issue a writ of mandamus to compel them to fulfil their constitutional obligations under Section 2 of the Elections (Special Provisions) Act No. 14 of 2004; and to issue a writ of mandamus compelling the respondents to issue an accepted identity card for the Eastern Provincial Council polls to be held on 10 May 2008 and for all other future elections.

### **Hearing of writ petitions**

The petition was heard by the President of the Court of Justice Chandra Ekanayake and Justice Anil Gunaratne of the Court of Appeal. At the beginning of the petition hearing, the Election Commissioner expressed his agreement to implement an alternative program to issue the accepted identity cards according to the facts mentioned in section 7 of the petition submitted by the Election Commissioner for case No. 176/2006, so subject to that agreement; the petition was withdrawn on April 28, 2008, by the petitioners.

### **Effect of judicial action**

These judicial actions made it mandatory for the voter to present a valid identity card to prove his identity while

voting. Thus, fraudulent voting and impersonation could be avoided entirely. It was beneficial for a free and fair election, and the election officials were also given specific guidance in making decisions.

In every election held after this court decision, the Election Commissioner/Election Commission will announce in advance which identity cards the election officials will accept as valid identity cards for polling. Thus, the Election Commissioner/Commission initiated issuing a valid identity card under the signature of an Assistant Election Commissioner (as per Section 4 of the Act) to voters who do not have a valid identity document for use in the relevant polling.

Thus, this decision made it possible to end impersonation and fraudulent voting almost wholly. Since the first general election was held in 1931, impersonation and fraudulent voting have been common in every election and in the 1982 Presidential Election. It was reported that another person also used the Sri Lanka Freedom Party's presidential candidate's vote.

Despite the relevant legal provisions being made by a parliamentary act, the Election Commission did not proceed according to those provisions (there may be reasonable reasons for not doing so), and when the election was prepared to be held under the old legal framework, a commendable effort was made by PAFFREL in terms of its legal interventions to protect the integrity of an election.

## Chapter Five

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### **Cancellation in case of disturbances in polling stations**

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A polling station must be run peacefully to ensure a free and fair election. When riots occur in a polling station, a problem arises as to whether the votes of that polling station should be accepted as valid votes. The reason for this is that the voters who have the right to vote in a particular polling station are prevented from voting, while the people who do not have the right to vote in such a polling station may cast a vote in such a situation. This chapter describes the existing legal provisions regarding the cancellation of the polling station in case of disturbances near a polling station and the judgments given by the Supreme Court in this regard.

#### **5.1. Riotous incidents at polling stations**

A poll should be conducted in such a way that it is free and fair, and secrecy is protected in the use of the vote. Disturbances in a polling station significantly prejudice free and independent voting. Especially by creating disturbing conditions in the vicinity of the polling stations unfavourable to a political party can lead to driving away the voters and polling agents, filling the ballot boxes by force, intimidating the voters and casting fraudulent votes.

In connection with an election, as well as in the vicinity of polling stations, riots were common until the year 2000. The culmination of this was the North West Provincial Council elections held on January 25, 1999. Within a few hours of the end of that election, the PAFFREL requested the Election Commissioner to cancel the election due to the obstruction of the free and fair election due to the violence that occurred in the election. (PAFFREL (1999).5) One of the measures to reduce the

impact of riots near polling stations on the freedom and independence of the polling station is to cancel the votes at the polling station where the riot occurred.

## **5.2. Provisions for Annuling of votes of Polling Station**

Provisions for annulling the vote and holding a re-vote in a polling station in case of disturbances in such polling stations were not included in the initial election laws. At that time, if the polling results were affected by disturbances in a specific polling station, the candidates could seek relief through an election petition. However, no legal provisions were made to do justice to the injustice caused to the voters.

This situation was reformed to some extent by the Elections (Special Provisions) Act No. 35 of 1988. By amending the Parliamentary Elections Act, the Presidential Elections Act and the Provincial Councils Elections Act, the Election Commissioner was given powers by the Elections (Special Provisions) Act No. 35 of 1988 to cancel the votes in the polling stations in case of disturbances in the polling stations.

Accordingly, a new section was inserted as 49A after section 49 of the Parliamentary Elections Act No. 1 of 1981, which stated,

49A(1) Where due to the occurrence of events of such a nature

(a) it is not possible to commence the poll at a polling station at the hour fixed for the commencement of the poll; or

(b) the poll at such polling station commences at the hour fixed for the opening of the poll but cannot be continued until the hour fixed for the closing of the poll; or

(c) any of the ballot boxes assigned to the polling station cannot be delivered to the counting officer.

(2) On receipt of an information under subsection (1) in relation to a polling station in an electoral district, the Commissioner may, after such inquiries as he may deem necessary to ascertain the truth of such information, by Order published in the Gazette declare the poll at such polling station void.

Sub-section 6 states that where the Commissioner is of the opinion that the result of the election for such electoral district will not be affected by the failure to count the votes polled, or the votes which would have been polled, in the polling station, he shall direct the returning officer to make such a declaration while where the Commissioner is of the opinion that the result of the election for such electoral district will be affected by the failure to count the votes polled, or the votes which would have been polled, at the polling station, he shall forthwith appoint a date for taking a fresh poll at such polling station.

These amendments made to the Parliamentary Elections Act were also made to the Presidential Elections Act and the Provincial Councils Elections Act through Part II and Part III of the said Act. In terms of these provisions, too, there were no direct legal provisions related to the nullifying of the polling station in cases of electoral corruption, such as the expulsion of voters near polling stations or polling agents, forced filling of ballot boxes and organized fraudulent voting.



### **5.3. Failure to annul rioted polling stations is a violation of fundamental rights.**

*Mediwake (Egodawela) v. Dayananda Dissanayake, Commissioner of Elections and Others (2011) I Sri L.R. 177*

#### **Background**

The background for this fundamental rights petition was the incidents in the Kandy district polling stations during the Central Provincial Council elections held on June 4, 1999. As pointed out by the petitioners in the petition, there had been incidents of election violence in 23 polling stations, out of which ballot boxes were filled by force in 12 polling stations, incidents such as the expulsion of polling agents and voters, intimidation of voters etc. were reported in other polling stations. Despite the complaints about such incidents, only one of those polling stations was annulled by the Election Commissioner. No re-voting was held, even for the annulled polling station.

#### **Fundamental Rights Petition**

This petition raised allegations regarding the cancellation of votes in only one polling station, while violent incidents were reported near 25 polling stations. The petitioners in the petition were a candidate who was nominated for the United National Party in this poll and three persons who worked as polling agents for the United National Party. All four are registered voters of the Kandy district as well as members of the United National Party.

The petition named 15 respondents, the first and second respondents being the Election Commissioner and the Returning Officer of Kandy District, respectively. The

Attorney General was named as the third respondent. The general secretaries of the recognized political parties that nominated candidates for this election were named respondents 4 to 10. The 11th respondent was the leader of the independent group that contested the election. From 12 to 15, four candidates of the People's Alliance political party who ran for the election were named as respondents. The petition alleged that these four engaged in election violence-related activities.

The petition claimed that by not annulling the said polling stations in terms of Section 46A of the Parliamentary Elections Act, 1981 and not conducting a re-poll under Section 46(2) 7, the Election Commissioner violated petitioners' right to equality guaranteed by Article 12(1) of the Constitution and the freedom of speech and expression including publication as guaranteed by Article 14(1)(a) by the Constitution, the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching as guaranteed by Article 14(1)(e); and the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise guaranteed by Article 14(1)(g).

### **Petition hearing**

On May 25, 1999, the Supreme Court granted leave to proceed with the case to examine whether the respondents' conduct violated petitioners' fundamental rights guaranteed by Articles 12(1) and 14(1)(a) of the Constitution among the claims in the said petition.

Supreme Court Justices Mark Fernando, Wadugopitiya and Smile heard the petition. The petition hearing was held on 17<sup>th</sup> October, 16<sup>th</sup> November and 4<sup>th</sup> and 5<sup>th</sup> December 2000.

The Attorney General raised a preliminary objection and requested that the petition not be heard as the senior presiding officers and the Inspector General of Police have not been named as respondents in this petition. Nevertheless, the Supreme Court said the petition was based on the failure of the Election Commissioner and the Returning Officer to cancel and re-poll in 23 polling stations and not on the malpractice of the police or senior presiding officers. Accordingly, the Supreme Court dismissed the Attorney General's preliminary objection.

Also, the Attorney General raised another preliminary objection: since the aggrieved parties can seek relief by filing an election petition regarding these incidents, they cannot seek relief from the Supreme Court under Article 126 of the Constitution. However, Justice Mark Fernando stated that election and fundamental rights petitions are completely different legal proceedings in disputes and related remedies (reliefs).

Also, the 16th respondent's Attorney-at-Law raised a preliminary objection and stated that the 16th respondent is a private party and cannot maintain this case against him concerning an executive or administrative action. The court noted that the principle of the judgment of *Faiz v. Attorney-General* will be used for this purpose.

The 1st respondent, Election Commissioner, was ordered to submit to the court the journal entries submitted by the senior presiding officers in relation to 25 polling stations where the occurrence of alleged incidents was claimed by the petitioners.

The first respondent Election Commissioner, and the second respondent District Returning Officer filed affidavits whereby specific incidents were admitted. It informed the court that the senior presiding officers and assistant returning officers have reported organized fraudulent voting, driving away the polling agents of the United National Party, mass herding near the polling

stations, intimidation of voters, etc. in relation to 15 polling stations. The general secretaries of the political parties (respondents) who contested the election were not denied these allegations.

### **The Supreme Court decision**

The Supreme Court decision was announced by Justice Mark Fernando on April 3, 2001, with the concurrence of Justices Vadugopitiya and Smile. As all the petitioners were voters of the respective district, it was declared that they had the power to sue for the relief requested by this petition. Also, Judge Mark Fernando, commenting on the non-cancellation of the vote in the polling centres where violent acts took place, stated in his decision that, indeed, the automatic cancellation of the vote is not required for every non-compliance with Section 46(a)(2) of the Parliamentary Elections Act. In the relevant section, by using the word “may”, the discretion has been given to the Election Commissioner. However, it is a duty-bound discretion. That discretion shall be exercised whenever proven events appear to have interfered with a free, equal and secret ballot.

As per Section 50 of the Parliamentary Elections Act, after each ballot box is opened and the ballot papers are counted, the ballot papers obtained from all the boxes in that counting centre are mixed. Even if it is assumed that the ballot papers can be removed, even if an order is given for a re-poll at this time after two years, the previous electoral roll will not be used. Even if the voter list is specified, some voters may not live. If the current electoral roll is fixed, some voters are not eligible for the previous election.

Therefore, the judge stated in his decision that the court could not issue an order to the first respondent to cancel the voting in the polling stations in question and hold a re-voting.

However, the court held that the petitioners' fundamental rights guaranteed under Articles 12(1) and 14(1)(a) were violated by the first and second respondents' failure to conduct a proper investigation into the polling stations in question and cancel the votes in the polling stations.

Although the petitioners did not plead for compensation, the court observed that they had come to the court for a crucial fundamental right and decided they were entitled to court fees.

Although the first respondent made a sincere effort to ensure a genuine election, although insufficient, the court, because the necessary support and resources were not available, did not issue an order for payment of legal fees against him and ordered that the government should pay a legal fee of fifty thousand rupees to the petitioners.

#### **5.4 Additional Powers to Cancel Rioted Polling Stations.**

*Dr. Arjuna Parakarama v. Dayananda Dissanayake & 10 Others -SC/FR 640/2000- S.C.M.25.02.2002*

##### **Background**

During the parliamentary elections held on August 28, 2000, there were reports of rioting and forced stuffing of ballot boxes in some polling stations. Alarming conditions were reported in the polling stations in the Kandy district. The Election Commissioner had cancelled 22 polling stations in six districts. However, in some polling stations where incidents of rioting and forceful stuffing of ballot boxes were reported, the vote was not cancelled. The situation was dire in the Kandy district. Thus, problems arose regarding the irrationality of the method used by the Election Commissioner to cancel polling stations. Dr Arjuna Parakrama, a civil society activist and coordinator of the Centre for Monitoring

Election Violence (CMEV), filed a fundamental rights case in this regard.

### **Fundamental Rights Petition**

The Election Commissioner, the General Secretaries of all the political parties who had submitted nominations for the parliamentary elections and the Attorney General were named as respondents in this petition.

The petitioner pointed out that during the 2000 elections, the Centre for Monitoring Election Violence had observed that there had been acts of violence in many polling stations in many districts, and thus, the petitioner stated in his petition that the result does not correctly represent the mandate of the people, and also that the members elected to Parliament based on the results of this election cannot be considered as properly elected MPs that represent the people's sovereignty. Accordingly, it was stated that the outcome of this election does not represent popular opinion.

It was mentioned that only 22 polling stations in 6 districts had been made void of the polling stations where the violence occurred.

However, according to the observations of the Centre for Monitoring Election Violence by the petitioner, out of the polling stations where serious violence occurred, approximately 1.3% of the polling stations reported of murder, forced stuffing of ballot boxes, bomb blasts, removal of ballot boxes, fraudulent voting, use of arson, chasing of voters and polling agents and misappropriation of public property. However, it was said that the Election Commissioner did not act to cancel the vote in those polling stations. He also claimed that through the petition, the government politicians were also requested to cancel certain polling stations, especially in the Kandy district.

For this reason, the petitioner stated that a letter was sent to the Election Commissioner on October 10, 2000, by the Centre for Monitoring Election Violence, but no action was taken in this regard.

Hence, it was stated that the measures taken by the Election Commissioner to reduce electoral corruption and errors were unclear and irrational.

Stating that this fundamental rights petition is being presented for the betterment of the people, the petitioner requested in his petition to order that the above-detailed actions of the Election Commissioner have violated the fundamental rights guaranteed by Articles 12(1) and 14(1) of the Constitution and to order the Election Commissioner to prepare guidelines for conducting the election and cancel the polling stations while claiming to issue an order to establish specific measures regarding doing so.

### **Hearing of petitions in the Supreme Court**

The petition was considered by a bench of Chief Justice Sarath N Silva, Justice Dr Shirani Bandaranaike and Justice Hector S. Yapa. As submitted by the petitioner, the Election Commissioner prepared and presented a series of guidelines to prevent errors in the election with the consent of the recognized political parties and submitted it to the court.

The petitioner agreed to these guidelines and withdrew the petition.

The set of guidelines submitted by the Election Commissioner to the court

01. Annulment of elections under sub-section 48A of Parliament Act No. 01 of 1981.

⇒ If the election cannot be held due to any reason beyond the control of the Returning Officer

- ⇒ During the voting period, if a polling agent or more agents are threatened or assaulted or thrown out of the respective polling station,
- ⇒ If the election staff cannot reach the polling station due to road obstruction on a relevant day
- ⇒ If there is a disturbance in the polling station in such a way that polling is not possible,
- ⇒ If anyone fills the ballot box by force,
- ⇒ Whenever a polling station is not a fair and free secret ballot,

The Election Commissioner exercises the power to cancel the polling station.

02. During the voting period in any polling station, as mentioned above, it is under 48 A (1) B under the Parliamentary Elections Act No. 01 of 1981 and under sub-section 46 A (1) B of the Presidential Elections Act No. 15 of 1988 No. 46 A (1) B of the Provincial Council Elections Act No. 2, the Election Commissioner shall act in accordance with the provisions of the above mentioned Election Act to void such polling stations in the event of the facts as mentioned above-indicated No. 01.

03. Ordering a new election under section 48A of the Parliamentary Elections Act No. 01 of 1981.

Under 48A (7), holding a new vote for the polling stations declared to have been void by the Election Commissioner based on the above-mentioned facts has had such an effect on the election results that the election commissioner focuses on the failure to count the votes polled or the votes which would have been polled and whether the preferences received by the groups have been affected to candidates nominated by the respective political parties or who were not intended to be counted in the election.



Regarding the fact that the votes polled, or the votes which would have been polled, if the preferences obtained by each candidate affected the result, the Commissioner shall immediately set a date for a new election in accordance with the sections of the Parliament Act 48 A 7, Presidential Election Act 46 A 7 and Provincial Council Act 46 A 17.

The Senior Presiding Officers shall record all incidents occurring during the election hours of the polling station during the election period and shall immediately inform the Assistant Returning Officer and the Returning Officer in his journal.

Section 127A of the Parliamentary Elections Act, Section 119A of the Presidential Elections Act and Section 76 of the Referendum Act require the polling stations' officers to maintain journal records and record all events in the polling station when the polling stations are closed. The Inspector General of Police had been asked to give instructions to police officers. On receiving this information from the senior presiding officers, the Commissioner will take appropriate action based on the above-mentioned Election Act.

The Returning Officer will take disciplinary action through their Heads of Department if any Presiding Officer or Police Officer at the polling station fails to record any incident in their journal entries.

These guidelines gave the Election Commissioner clear and practical guidance to annul the vote in the relevant polling station and hold a re-vote in the event of an impact on the election result.

### **Results of the petition**

In the last few elections, the Election Commissioner followed the guidelines that brought about consensus

through this fundamental rights petition. For example, in the 2009 North Western Provincial Council election, the vote was cancelled in the Nayakkarchenai polling station in the Puttalam district, and a re-poll was held. In the 2010 parliamentary election, 34 polling stations in the Nawalapitiya constituency of Kandy district were cancelled, and re-polls were held, and one polling station in Trincomalee district was cancelled and re-pollled in the same election (Deshapriya (2011),14).

Also, the Local Government authorities (Amendment) Act No. 22 of 2012 amended the Local Government Elections Act (Chapter 262). Accordingly, a new section 72A was inserted into the Local Authorities Elections Act as follows.

Section 72A. Disruption at polling stations.

- (a) Failure to commence voting at a polling station at the scheduled time for commencement of voting;
- (b) In such a polling station where polling commences at the scheduled time for the opening but fails to continue till the scheduled time for the closing of polling,
- (c) Inability to hold voting in that polling station for any reason beyond the control of the presiding officer of the polling station,
- (d) threatening, killing or expelling one or more polling agents from the polling station in the event of disruption of voting;
- (e) Inability of the polling station staff to reach the polling station due to any obstruction in the road,
- (f) Difficulty in conducting voting at the polling station due to any incident disturbing the peace at the polling station,

(g) Forced insertion of ballot papers into the ballot boxes by any person, or (h) absence of true, free, fair and secret voting in any polling station and then the presiding officer of the polling station should report such incident to the Returning Officer, and then, the returning Officer should inform it to the Election Commissioner.

(2) The Commissioner shall, on receipt of any information under sub-section (2) and after making such inquiries as may be deemed necessary to ascertain the accuracy of such information, by order published in the Gazette, declare the polling to be void.

A comparison of those guidelines and this Section 72A makes it clear that there is a direct connection between these amendments and the consensus in the case of *Dr Arjuna Parakrama v. Election Commissioner*.

## Chapter Six

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### **Appointment of non-nominated persons as public representatives**

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In order to be appointed as a public representative, generally, nominations must be submitted for the relevant election, and a mandate must be obtained from the people. However, it has been seen that the election commissioner/commission appoints them as public representatives, without contesting the election, on the nomination of the party secretary to fill the vacancies that arise in the public representative body. This situation is seen in the completion of the vacant seats of members of the provincial councils, the completion of the vacant representative positions in the local government bodies, and the completion of the national list of members of the parliament.

This chapter discusses some of the decisions given by the Supreme Court regarding appointments as public representatives without submitting nominations.

#### **6.1. Legal provisions on appointment of an elected member in his place when a member withdraws**

Provisions for filling the vacancy of a Member of Parliament.

The provisions regarding the filling up of vacancies in the event of the seat of a Member of Parliament being vacant are contained in Part V of the Parliamentary Elections Act No. 1 of 1981. Certain sections of this section have been amended by the Parliamentary Elections (Amendment) Act No. 15 of 1998 and the Elections (Special Provisions) Act No. 35 of 1988.

It states that if a parliamentary seat becomes vacant other than losing the seat due to an election petition, the Election Commissioner must notify the Secretary General

of the relevant party to nominate a candidate according to Article 99(13) of the Constitution. Article 99(13) of the Constitution states that the candidate who received the following highest number of preferential votes nominated by the political party or independent group to which the vacant council seat belongs shall be declared elected for that empty seat.

Accordingly, it is clear that the vacant seat of a Member of Parliament who contested from a constituency will be filled by the candidate with the following highest number of preferential votes mentioned in the nomination paper.

The provisions regarding the filling up of vacancies in the event of the seat of a Member of Parliament appointed through the national list being vacant are contained in section 64(5) of the Parliamentary Elections Act No. 1 of 1981 as amended by the Parliamentary Elections (Amendment) (Special Provisions) Act No. 35 of 1988. It states that “Notwithstanding anything in the preceding provisions of this section, where the seat of a member of Parliament declared elected under Article 99A of the Constitution becomes vacant, Secretary-General of Parliament shall inform the Commissioner who shall require the Secretary of the recognized political party or the group leader of the independent group to which the member who vacated the seat belonged, to nominate a member of such party or group to fill the vacancy”.

Thus, there is no requirement in this section that if a member of the national list becomes vacant, the member must be filled by a person nominated by that party or group in the relevant election.

**Statutory provisions regarding the appointment of a replacement member when an elected member of a provincial council resigns**

The Provincial Council Polling, which was based on a proportional representation system, was converted into a mixed electoral system by the Provincial Councils

Election (Amendment) Act No. 17 of 2017. Accordingly, section 65, which includes provisions regarding filling vacancies in the case of vacant members of provincial councils, was also subjected to serious amendments by the said amendment act in accordance with the said provisions. Currently, the provisions regarding filling vacancies in a provincial council are as follows.

(1) Where the office of a member of a Provincial Council becomes vacant due to death, resignation or any other cause, the Secretary of the Provincial Council shall inform the Commissioner of the fact of the occurrence of the vacancy. The Commissioner shall fill such vacancy the manner hereinafter provided.

(2) If the office of a member falls vacant due to death, resignation or for any other cause, the Commissioner shall call upon the secretary of the recognized political party or the group leader of the independent group to which the member vacating office belonged, to nominate within a period to be specified by the Commissioner, a person eligible under this Act for election as a member of that Provincial Council, to fill such vacancy. If such secretary or group leader nominates within the specified period an eligible person to fill such vacancy and such nomination is accompanied by an oath or affirmation, as the case may be, in the form set out in the Seventh Schedule to the Constitution, taken and subscribed or made and subscribed, as the case may be, by the person nominated to fill such vacancy, the Commissioner shall declare such person elected as a member of that Provincial Council from the administrative district in respect of which the vacancy occurred. If on the other hand, such secretary or group leader fails to make a nomination within the specified period, the Commissioner shall declare elected as member, from the nomination paper submitted by that party or group for the administrative district in respect of which the

vacancy occurred, the candidate who has secured the highest number of preferences at the election of members to that Provincial Council, next to the last of the members declared elected to that Provincial Council from that party or group. The Commissioner shall cause the name of the member as declared elected to be published in the Gazette.

(3) Where a vacancy occurs in the case of a woman member of a Provincial Council under subsection (1) or (2) such vacancy shall be filled only by the nomination of a woman candidate from the relevant Electorate List or the District List other than the women candidates who have been elected or are not qualified to be a member.

### **Provisions regarding completion of membership in a local government body when a vacancy occurs**

The local government polling process was changed from a proportional representation system to a mixed system by the Amendment Act No. 22 of 2012 and Act No. 16 of 2017, and the provisions on filling vacancies in the local government bodies were also amended by the aforementioned Acts to comply with the changes in the electoral system. Accordingly, it is mentioned in section 66A, which stipulates the existing provisions.

When a position of a candidate elected by vote for a division of a local government becomes vacant, the local election officer shall inform the party secretary or independent leader of the party to which the vacant member belonged to submit the name of a candidate whose name is mentioned in the first nomination paper or the additional nomination paper for that vacant position.

It is further stated that if the vacant position is a female member, a female candidate should be appointed.

Thus, it is clear that a person cannot be appointed to fill a vacancy in a local government body under the current legal provisions without the name mentioned in the nomination paper.

## **6.2. Parliamentary Ministers becoming Chief Ministers without contesting the election**

Until the passing of the Provincial Council Elections Act No. 17 of 2017, in the event that a member elected to a Provincial Council withdraws, the legal provisions regarding the filling of the vacancy were included in Section 65 of the Provincial Council Elections Act No. 2 of 1988, and it states that,

(1) Where the office of a member of a Provincial Council becomes vacant due to death, resignation or any other cause, the Secretary of the Provincial Council shall inform the Commissioner of the fact of the occurrence of the vacancy. The Commissioner shall fill such vacancy in the manner hereinafter provided.

(2) If the office of a member falls vacant due to death, resignation or for any other cause, the Commissioner shall call upon the secretary of the recognized political party or the group leader of the independent group to which the member vacating office belonged, to nominate within a period to be specified by the Commissioner, a person eligible under this Act for election as a member of that Provincial Council, to fill such vacancy. If such secretary or group leader nominates within the specified period an eligible person to fill such vacancy and such nomination is accompanied by an oath or affirmation, as the case may be, in the form set out in the Seventh Schedule to the Constitution, taken and subscribed or made and subscribed, as the case may be, by the person nominated to fill such vacancy, the Commissioner shall declare such person elected as a member of that Provincial Council from the administrative district in



respect of which the vacancy occurred. If on the other hand, such secretary or group leader fails to make a nomination within the specified period, the Commissioner shall declare elected as member, from the nomination paper submitted by that party or group for the administrative district in respect of which the vacancy occurred, the candidate who has secured the highest number of preferences at the election of members to that Provincial Council, next to the last of the members declared elected to that Provincial Council from that party or group. The Commissioner shall cause the name of the member as declared elected to be published in the Gazette.

(3) Where all the candidates whose names were on such nomination paper have been declared elected or where none of the candidates whose names remain on such nomination paper, have secured any preferences or where the member vacating office was not elected from an administrative district, the Commissioner shall forthwith inform the President who may, on receipt by him of such information and at any stage when he considers, it expedient to do so, by Order published in the Gazette, direct the Commissioner to hold an election to fill such vacancy. The provisions of this Act shall apply to, and in relation to, an election held under this section. Every person elected as a member of a Provincial Council at an election held in pursuance of an Order made by the President under this section shall hold office for the unexpired period of the term of office of the member whom he succeeds.

According to these provisions, in the event of the resignation of a member of a provincial council, it is not essential that the person nominated by the secretary of the relevant party be a person nominated by that party for that election.

By abusing the provisions of Section 65 of the Provincial Council Elections Act, a trend of parliamentary ministers becoming Chief Ministers without contesting the Provincial Council elections began in the late 1990s. What happens there is that a close relative of the concerned minister, often the wife, submits nominations for the relevant provincial council election, competes and wins. The concerned minister is actively involved in this election campaign and is also asking his wife to win as he will be the Chief Minister in the future. After the victory of the election, the concerned minister's wife was sworn in as the Chief Minister. A few days later, a member of the provincial assembly representing that party resigned, and the minister resigned as a parliament member. After that, the party secretary nominates the former minister to the election commissioner as the successor of the respective resigned member. Accordingly, he is published in the Gazette by the Election Commissioner as a member of the Provincial Council. After that, the minister's wife, who held the post of Chief Minister until then, resigned from the post of Chief Minister and instead, this MP is appointed as the Chief Minister. In this pattern, during the provincial council elections, several ministers who worked as ministers in the parliament became chief ministers.

### **6.3 The nomination list may also be terminated by the resignation of the candidates**

*Devananda v. Dayananda Dissanayake (2000) 3 Sri LR. 127*

#### **Background**

The petitioner, in this case, was Douglas Devananda, who was also the General Secretary of EPDP. In 1994, Douglas Devananda contested for the Jaffna constituency from an independent group. 13 people from that group were nominated, and 9 of them were elected to the

Parliament. Later, the member in the 9th position resigned, and the candidate who got preferential votes in the 10th position was declared a member of parliament. The 11th, 12th and 13th ranked candidates resigned from the Independent Group, the 10th ranked candidate who became a Member of Parliament, and the 4th ranked candidate who entered the Parliament were expelled from the Independent Group.

The respondent then nominated the names of two non-nominated persons to the Election Commissioner for appointment as Members of Parliament. However, the Election Commissioner announced in the Gazette that the two candidates who got the 11th and 12th votes (who have now left the independent group) were elected as MPs. The petitioner filed a writ petition against that decision.

### **Writ Petition**

The Election Commissioner was named as the first respondent in the petition. The second respondent was the Returning Officer of Jaffna District. The candidates who received preferential votes in the 11th, 12th and 13th places in the election were named as the 3rd, 4th and 5th respondents, respectively. The Secretary General of the Parliament was named as the 6th respondent.

The petitioner filed this petition on 4th April 1999. In that petition, he stated that there was a memorandum of understanding between the EPDP organization and the United National Party and accordingly, under the leadership of the petitioner, he ran for the election as the Independent Group No. 2 and stated that in the nomination paper, ten candidates from the EPDP organization and three candidates from the United National Party were presented. Respondents 3, 4 and 5 in this petition were the United National Party candidates.

Accordingly, the petitioner stated that nine candidates were elected to the parliament in the election. After the election, one candidate resigned, and the candidate who got the 10th position in the nomination list was appointed as a member of parliament. Then two other candidates were expelled from the party. The petitioner also claimed in the petition that the Supreme Court also confirmed the decision to expel these MPs from the party, and as the candidates who got 11 to 13 votes had resigned from the group, there were no candidates in the nomination paper, so the names of two other people were presented as MPs, but the Election Commissioner announced candidates received preferential votes at 11<sup>th</sup> and 12<sup>th</sup> places as Members of Parliament by a Special Gazette No. 1074/10 dated 08-04-1999. The petitioner, challenging the decision of the Election Commissioner, sought the following reliefs as the said candidates were candidates who had already resigned from the Independent Group.

- I. To issue a writ of certiorari invalidating the certificate given by the 2nd respondent that the 3rd and 3rd respondents were held as Members of Parliament.
- II. To issue a writ of certiorari setting aside the Extraordinary Gazette Notice issued by the Election Commissioner announcing the appointment of 3<sup>rd</sup> and 4<sup>th</sup> respondents as Members of Parliament under Section 64(2) of the Parliamentary Elections Act No. 1 of 1981.
- III. For the issuance of a writ of mandamus restraining the 5th respondent from appointing in future appointments.
- IV. To issue a writ of mandamus against respondents 1 and 2 to deem that the nomination paper of the independent group 2 of the Jaffna district has been closed.

- V. To issue a writ of mandamus against the 1st respondent by calling for nominations from the petitioner for the vacant seats.

Also, at the beginning of the petition, it was requested grant an interim injunction for the memberships of parliament of the 3rd and 4th respondents to be suspended until the hearing of this petition is completed.

### **Hearing of writ petitions**

The petition was heard by Justices Yapa and Kularathne of the Court of Appeal. At the beginning of the hearing of the petition, the Court of Appeal refused to grant the interim injunction sought by the petitioner. Against that decision, the petitioner appealed to the Supreme Court, and the Supreme Court issued an interim restraining order preventing the 3rd and 4th petitioners from acting as Parliament members until the appeal petition hearing was completed (Case No. S.C. Spl. L.A.No.96 /99). During the hearing of the petition, the 5th respondent admitted his resignation. However, the 3<sup>rd</sup> and 4<sup>th</sup> respondents stated that the petitioner obtained signatures on many papers while preparing the nomination papers, they did not hand over any resignation to the petitioner, and the petitioner prepared forged resignation letters using the blank papers signed by them. Nevertheless, the petitioner had submitted affidavits that the petitioner did not collect signatures from the candidates.

### **Decision on Petition Hearing**

The decision of the petition hearing was given on August 4, 2000, by Justice Hector Yapa with the concurrence of Justice Kularatne. Based on the facts presented there, it was decided that the resignations of the 3<sup>rd</sup> and 4<sup>th</sup> respondents were genuine.

Accordingly, taking into consideration the provisions of Article 93(13)(b) of the Constitution as well as the

provisions of Article 101(1) of the Constitution, the Judge, on the authority conferred by the said Articles, emphasized Section 64 of the Parliamentary Election Act No. 1 of 1981 as amended by Section 17 of the Act No. 5 of 1988 passed the Parliament.

It is stated,

*“Where all the candidates whose names appear in the nomination paper presented by a recognized political party or independent group for a constituency have been elected or otherwise, and a vacancy arises to be filled by a member nominated by that party or group. The Electoral Officer of that constituency should inform the Commissioner that there is no candidate left to declare that the candidate has been elected to fill that vacancy in the nomination paper of the party or group to which the member who vacated the seat belonged, to be declared elected to fill such vacancy.”*

Accordingly, the judge decided that the term "otherwise", as mentioned here, includes dismissal or resignation from the party or group and accordingly issued the writs requested by the petition.”

### **Impact of the decision of the Court of Appeal**

This petition was filed on 4th April 1999. The judgment was delivered on 04 August 2000. The Parliament that was formed in 1994 was dissolved on 18 August 2000. (<https://www.parliament.lk/si/duration-of-parliament-2022-02-03>)

**6.4 A person who was a Member of Parliament at the time of the election cannot be appointed to the Provincial Council.**

**Centre for Policy Alternatives (Guarantee) Ltd and another v Dayananda Dissanayake, Commissioner of Elections and others - (2003) 1 Sri L.R 277**

**Background**

Nalini Weeravanni from the People's Alliance ran for the Uva Provincial Council elections held on April 6, 1999. Due to the victory of that party, she was given the post of Chief Minister. On May 19, 1999, her husband Samaraweera Weeravanni, a Parliament member at the time, resigned from Parliament. On May 21, 1999, a member of the Uva Provincial Council who represented the People's Alliance also resigned.

The Election Commissioner asked the Party Secretary to nominate a suitable person for the vacant Provincial Council post, and the Party Secretary nominated Samaraweera Weeravanni, a Parliament Member, at the time of the election. Accordingly, on May 24, 1999, the Election Commissioner announced Samaraweera Weeravanni as a member of the Uva Provincial Council and on the same day, Nalini Weeravanni resigned as Chief Minister. Samaraweera Weeravanni was appointed to the vacant Chief Ministership.

**Writ Petition**

Two petitions were referred to the Court of Appeal on 1 June 1999, stating that a person whose name is not on the original nomination paper cannot be appointed as a member. One petition was presented by the Centre for Policy Alternative and the other by Dr. Pakyasothy Saravanamuthu, Executive Director of the Centre for Policy Alternative and co-convener of the Centre for Monitoring Election Violence.

These petitions requested that a writ of certiorari is issued to invalidate the announcement issued by the Election Commissioner on May 24, 1999, that Samaraweera Weeravanni was elected as a member of the Uva Provincial Council, and that a writ of quo warranto be issued declaring that Samaraweera Weeravanni's membership in the Uva Provincial Council is invalid.

These petitions named the Election Commissioner as the first respondent, Samaraweera Weeravanni as the second respondent, and the General Secretary of People's Alliance as the third respondent.

The Court of Appeal heard the petition, and on November 6, 2001, the Court of Appeal announced that the Election Commissioner requested the Party Secretary to nominate a suitable person to fill the vacancy in accordance with the provisions of the Provincial Councils Elections Act and Samaraweera, who at that time was qualified to act as a member of the Provincial Council. Since the party secretary has nominated Weeravanni, it is legal for the election commissioner to appoint him. Accordingly, the petition of the petitioners was dismissed

### **Appeal to the Supreme Court**

The petitioner appealed against the decision to the Supreme Court, and on May 28, 2002, the Supreme Court granted the leave to proceed with the petition. Accordingly, the case was heard before Supreme Court judges Mark Fernando, GPS Gunasekara and Wigneswaran.

There, according to the provisions of the Provincial Councils Elections Act, a specific interpretation was made as to whether it is legal to nominate a person whose



name was not included in the original nomination to fill a vacancy.

At the end of the appeal hearing, Judge Mark Fernando announced his decision on March 17, 2003, with the concurrence of the other two Supreme Court judges.

Interpreting Section 65 of the Provincial Councils Elections Act, the court stated that to fill the vacancy of the Provincial Council Member, the party secretary should nominate a person who is suitable to hold the position of Provincial Council Member at the time of nomination for the relevant election. Section 9 of the Act states that a person suitable for the position of a Provincial Council member should not be a person who is disqualified under Section 3 of the Provincial Council Act. (Accordingly, holding a Member of Parliament is a disqualification for nomination).

Also, when the Party General Secretary nominates a person whose name is not mentioned in the original nomination paper, the Election Commissioner does not even know whether that person has consented to be appointed to that position. A candidate's consent is in the nomination paper. Thus, the nomination power of the Party General Secretary is limited to the names mentioned in the original nomination list only. A suitable person should be nominated from among those nominations. (Perhaps those whose names are mentioned in the nomination paper may be disqualified by now).

Similarly, the court further stated that due to the delay of many years, the outcome of this judgment might appear futile, but since this is a matter related to general upliftment, the Election Commissioner, independent groups of political parties, candidates, as well as voters must have definitely been aware of the process of filling up the vacancies of MPs in a provincial council.

Accordingly, a writ of certiorari was issued to cancel the declaration of the Election Commissioner appointing Mr Samaraweera Weeravanni as a member of the Uva Provincial Council.

### **Effect of Supreme Court decision**

By the time the decision was issued, Mr Samaraweera Weeravanni had resigned from the post of Chief Minister as well as from the relevant political party. However, due to this lawsuit and the judgment, the political culture of nominating a person whose name was not included in the original nomination paper for a vacant member position at the discretion of the political party secretary ended.

### **6.5 The appointment of those who are not on the electoral list of local government bodies is also challenged**

*Masahir v. Returning Officer - Kegalle District and others (2005) 3 Sri L.R. 39*

### **Background**

In the local government election held on March 20, 2003, Masahir (petitioner) contested for the Mawanella Pradeshiya Sabha from the United National Party nomination list. According to the election results, the United National Party won 16 seats. The petitioner was 17th on the preference list. On March 15, 2003, one candidate (the 4th respondent) informed that he was withdrawing from the position due to personal reasons. Accordingly, he believed that the petitioner would be entitled to membership in the Mawanella Pradeshiya Sabha. However, on 23 May 2003, the petitioner came to know that the General Secretary of the United National Party (the second respondent) had proposed the name of

a person not on the nomination list (the third respondent) as a member of the United National Party in the Mawanella Pradeshiya Sabha to the Kegalle District Returning Officer (the first respondent). Although the petitioner raised objections in this regard, the Kegalle District Returning Officer appointed the person as a member of the Pradeshiya Sabha regardless of those objections.

Section 65A of the Local Authorities Elections Act as amended by the Local Authorities Elections (Amendment) Act No. 24 of 1987 at the time of holding this election stated,

If the position of a member becomes vacant due to death, resignation, or any other reason, a person authorized under this Ordinance to be nominated as a member of the local authority to fill the vacancy within a period specified by the Returning Officer of the district. The member vacating the post should request the secretary of the recognized political party to which he belonged or the leader of the independent group. If a qualified person is nominated to fill the said vacancy by the secretary or team leader within the prescribed period, the person nominated to fill the said vacancy has duly signed an oath or pledge as specified in the Seventh Schedule of the Government Constitution. If there is an appropriate oath or pledge with the nomination, the election officer must declare that person elected as a member of the local government body. On the other hand, in the event that the secretary or the group leader does not make nominations within the specified period, the last member declared to have been elected to the local government body from the party or group from the nomination paper handed over by that party or group. In the election of members to the local government, the election officer should declare that the candidate who obtained the most votes was elected as the member."

However, the petitioner filed a writ petition seeking to set aside the appointment of a person who was not on the nomination paper to the vacant member post.

### **Writ Petition**

Through the writ petition, the petitioner said that the nomination by the Secretary of the United National Party as a member who is not on the nomination paper and the announcement by the Kegalle District Returning Officer that he has been elected to the vacant member position is contrary to Section 65A of the Local Authorities Elections Act.

Accordingly, the petitioner claimed that in those decisions, the Party General Secretary and the District Returning Officer did not follow the principle of natural justice and did not investigate the facts correctly.

Accordingly, the petitioner filed a writ petition in the Court of Appeal seeking a writ of certiorari to cancel the statement of the Kegalle District Returning Officer appointing a person whose name was not mentioned in the nomination paper to the vacant member position and a writ of quo warranto declaring that the 3rd respondent, who was the member whose name was not mentioned in the nomination paper, has no legal power to hold the said member position, a writ of mandamus to appoint the petitioner to the vacant membership.

By this writ petition, the Kegalle District Returning Officer, the General Secretary of the United National Party, the person appointed for the vacant member position and the person who submitted the nomination and later withdrew it were named as respondents 1 to 4, respectively.

### **Petition Hearing**

The petition was heard by Justice Emami and Justice Shri Skandaraja of the Court of Appeal.

During the hearing of the petition, it was submitted that the name of the 3rd respondent was not mentioned in the nomination paper. Accordingly, the point to be considered was whether a party secretary has the authority to propose the name of any person for a vacant member position according to section 65A of the Local Government Elections Act.

### **Decision on Petition Hearing**

On September 19, 2005, Justice Shri Skandaraja, with the concurrence of Justice Imam, pronounced the judgment in the writ petition. The judge observed that Section 65A of the Local Authorities Elections Act has similar provisions to Section 65 of the Provincial Council Elections Act. Accordingly, it was noted that the already decided decision of the Supreme Court in the case of Centre for Policy Alternative and others v. Dayananda Dissanayake - Election Commissioner and others (SC APPEAL No. 27/2002) (2003SLR 1V 277) could be taken as a precedent for this. Accordingly, the judge said that there is no empty or unclear provision in nominating a person for a vacant membership to the party secretary, the responsibility of nominating a person mentioned in the nomination list is assigned to the reading of the remaining sub-sections, quoting the statement of Judge Mark Fernando in the above case, a writ of certiorari was issued quashing the first respondent's declaration of appointment of the 3rd respondent as a member and a writ of mandamus was issued to the first respondent, Kegalle Returning Officer, to fill the vacant post of Manwanella Pradeshiya Sabha member in accordance with the law.

## **6.6 Provisions for filling vacant National List seats are not in the Constitution but in the Parliamentary Elections Act.**

*Centre for Policy Alternatives (Guarantee) Ltd & Another v. Kabeer Hashim & Others - SC (FR)*  
No.54/2016 S.C.M. 24.05.2016

### **Background**

Sarath Fonseka contested for the Colombo District from the Democratic Party in the Parliamentary General Election held in August 2015. According to the election results, he was not elected to the parliament.

Later, due to the death of MKDS Gunawardena, a member of the National List of the United National Party, a member of the National List of the United National Party became vacant. The General Secretary of the United National Party proposed Sarath Fonseka's name to the Election Commission for that vacancy. Accordingly, on February 8, 2016, the Election Commission published Sarath Fonseka's name in the Gazette and on February 9, he was sworn in as a Member of Parliament. The Centre for Policy Alternatives and its Executive Director, Dr Paikiasothy Saravanamuttu filed a fundamental rights case claiming that this process violated their fundamental rights.

### **Fundamental Rights Petition**

It was stated in the petition that the first Petitioner is an organization that intervenes in the Constitutional Process, Good Governance, Administrative law and public policy in the government and non-government sectors, while the second petitioner is its executive director. The petition named the United National Party Secretary General, Sarath Fonseka, the Speaker, the Secretary General of Parliament, the three commissioners

of the Election Commission and the Attorney General respondents from 1 to 8, respectively.

The 2nd respondent contested for the Colombo district from the Democratic Party, and it was published in the newspapers that on January 20, 2016, MKDS Gunawardena, a member of the National List of the United National Party, had died, and the petitioners submitted to the court that the newspapers had reported on February 3, 2016, an agreement was said to be reached by the 2<sup>nd</sup> respondent with Prime Minister Ranil Wickremesinghe and, the name of the second respondent had been published in the gazette on February 8, 2016, by the Election Commission, and that on the 9<sup>th</sup>, the second respondent had taken oath as a Member of Parliament before the third respondent.

Quoting Section 64(5) of the Parliamentary Elections Act No. 1 of 1981, in the event of a vacancy in the national list, the secretary of the party or the leader of the independent group shall propose to the secretary of the political party or the leader of the independent group the name of a member of that party or group to fill the vacancy and thus it was stated that the Act is incidental to the constitution without prejudice as the said Act was enacted in accordance with the powers given to the parliament by article 101 of the Constitution. Accordingly, the petition stated that the vacancy was not filled correctly in Article 99A of the Constitution; when a seat of a Member nominated by the National List becomes vacant, it should be filled by one of the members of the National List or one who was a member of the party at the time of submitting the nomination, since the second respondent was a member of another party at the time of submitting the nomination.

The second respondent's Member of Parliament is also compelled to make a declaration that the petitioners' fundamental rights guaranteed by Article 10, Article 12(1), Article 14(1)(a) and Article 14(1)(c) of the

Constitution have been violated due to this process. Thus the Supreme Court was also requested to declare that the second respondent's parliamentary membership is null and void.

### **Determination of the Supreme Court**

Chief Justice Sripavan and Supreme Court Justices Sisira de Abreu and Nalin Perera conducted the preliminary hearing on whether this petition should be granted leave to proceed. The Chief Justice gave the decision on May 24, 2016, on behalf of the panel of judges who listened to the concerns of the petitioners and respondents and with the agreement of the other judges. The Chief Justice there declared that the name of the 2nd respondent has not appeared for the 2015 parliamentary general election through the national list of the United National Party or the list of district nominations. Thus, the petitioners are alleging that the 2nd respondent was appointed to the vacant seat of Mr M. K. D. S. Gunawardena, who was elected under Article 99(a) of the Constitution. Section 64(5) of the Parliamentary Elections Act No. 1 of 1981 describes the provisions regarding filling vacant seats. The Chief Justice said that the Court was of the opinion that the provision of Article 99(a) of the Constitution cannot be applied to filling of vacant seats after an election and stated that Article 99(a) does not extends to matters connected to filling of members of Parliament elected after an election. Accordingly, it was decided that the petition would not be granted leave to proceed as the court did not comprehend a sufficient legal basis to allow the hearing of this petition.





## Chapter Seven

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### Election Campaign Expenses

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If an election is to be held free and fair, a level playing field should be created for every candidate. Winning a vote based on economic ability challenges the integrity of an election and the mandate of the people. Legal provisions related to the regulation of election campaign expenses are adopted to protect the free and fair nature of the election. In the current legal landscape, no election-related Act contains legal provisions regarding regulating election expenses. This chapter describes the legal provisions on the regulation of election campaign expenses included in the Ceylon (Parliamentary Elections) Order-in-Council of 1946 and some Supreme Court decisions regarding the implementation of those provisions.

#### 7.1 Legal provisions on election campaign expenses

There are many conversations about regulating expenses incurred by candidates and competing political parties in an election, but there is currently no such law in force. However, such provision was included in Ceylon (Parliamentary Elections) Order-in-Council of 1946. Accordingly, Section 70 of the said Act has included provisions regarding the reporting of a declaration regarding the election expenses of an election.

Accordingly, within 31 days after the election results are published in the Gazette, the representative of each candidate must submit a declaration regarding the campaign expenses of that election to the Returning Officer in accordance with the format specified in the Act. This expense statement should include the following expenses;

- ❖ Along with bills of all expenses incurred by the representatives of the candidate
- ❖ Personal expenses incurred by the candidate
- ❖ Expenditure which is in dispute to the knowledge of the representatives
- ❖ All expenses to be paid
- ❖ All money and balances received by the candidate from the candidate or others (including promised money)
- ❖ Money received as contributions
- ❖ Loans and Deposits

The candidate must sign these declarations of expenses in the presence of a justice of the peace on behalf of the candidate, and the signatures must be certified by the justice of the peace. Also, forms Q and R for the schedule of the Act should be forwarded to the Returning Officer along with this expenditure report.

If the expenditure report is not submitted by the due date, reasonable reasons should be given for not submitting it before the due date before sitting or voting as a Member of Parliament. Failure to do so will result in a fine of Rs. 500 per day. Failure to submit this statement of expenditure shall render the candidate and the representative of the candidate guilty of corruption under Section 58 of this Act.

Section 75 of the Ceylon (Parliamentary Elections) Order-in-Council, 1946 states that when there is a delay in the delivery of an election expenditure report, the matter should be presented to an election judge or Supreme Court judges, and a decision should be obtained that the delay is reasonable.

These provisions of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, were repealed by the provisions of the Parliamentary Elections Act No. 1 of 1981.

## **7.2 A reasonable delay is permitted by the court.**

*In re de Zoysa. 38 NLR 244*

### **Background**

Francis de Zosia contested the Balapitiya by-election held on September 21, 1935, and he was defeated in that election. This election was held under the Ceylon (State Council Elections) Order-in-Council 1931. The results of this election were published in the Special Gazette on 26 September 1935. According to the provisions of the Order-in-Council, the expenditure report must be submitted to the Returning Officer within 31 days from the date of publication of the result in the newspaper. Francis Soyza, through his representative, submitted the expenditure report of his election campaign expenses to the Returning Officer within the stipulated period. However, the bill related to an expenditure of 20 rupees which was in the expenditure report, was not submitted with the expenditure report. On October 23, the Returning Officer, who observed that a 20-rupee bill was short, informed Francis Soyza in writing. Also, since the time to submit the expenditure documents ends on October 28, the Returning Officer informed Francis Soyza on November 1 that the bill has not been submitted within the stipulated time, so the permission of the Supreme Court under Act 72 of Order-in-Council should be obtained. On November 12, Francis Soyza forwarded the bill to the Returning Officer.

### **Revision petition to the Supreme Court**

The applicant stated in his petition that he could not attach the relevant bill to the expenditure register due to forgetfulness and that he proceeded to forward it after the Returning Officer informed him of the same, and that

he received the announcement made by the Returning Officer on October 24th was only received on October 31st and that he was out of Colombo during that period. The court was informed that it was not received and that this bill belonged to a printing press in the Ambalangoda area, and therefore it took some time to get it and hand it over to the Returning Officer.

### **The decision of the Supreme Court**

The revision petition was heard by Judge Koch, who, in his judgment, on 11 March 1936, held that the petitioner's action was not contempt of law but forgetfulness. Also, taking into consideration the filing of the relevant bill within one month after the due date, the request of the applicant was allowed.

### **7.3. It is an offence not to include translation fees in the expense report**

#### ***Don Philp v. T.B. Ilangaratne- 1951 NLR 561***

#### **Background**

T. B. Ilangaratne (Independent) and Pred E. De Silva (UNP), and D. B. Vadugopitiya (Independent) appeared for the Kandy by-election held in May 1948. TB Ilangaratne won. TB Ilangaratne's supporters filed an election petition alleging that the character and existence of candidate Pred Silva had been prejudiced by publishing false reports.

#### **Election petition**

The election petition states that about eight (08) people acting as supporters of T.B. Ilangaratne made false statements about Pred de Silva in public meetings and through newspapers, and those false statements were harmful to the character and existence of candidate Pred

de Silva and, therefore the petitioner requested to cancel this vote.

### **Court decision**

(The facts related to the false statements in the judgment are described in Chapter 9) The decision regarding the election petition was given by Judge Nagalingam on February 10, 1949. There, in addition to the prejudicial situation faced by candidate Pred de Silva due to the false statements made by T.B. Ilangaratne's supporters, Judge Nagalingam also drew attention to another matter that was revealed during the hearing of the petition. Accordingly, during the hearing of the petition, it was revealed that an amount of 40 rupees was paid to a man named Ganeshan to translate Pred de Silva's election manifesto into the Tamil language, and that amount was not included in Pred de Silva's election expenditure statement. Pred de Silva has admitted these facts during the hearing of the petition.

Accordingly, Judge Nagalingam decided Pred de Silva had committed an offence under Section 82 of the Ceylon (Parliamentary Elections) Order-in-Council 1946.

### **The outcome of the Supreme Court decision**

According to the Supreme Court's decision, Ilangaratne lost his parliamentary seat, and Pred de Silva, who won second place in the election, was also found guilty. Accordingly, a by-election was held for the Kandy constituency in June 1949. TB Ilangaratne or Pred de Silva did not contest that by-election, and Tamara Kumari Ilangaratne (TB Ilangaratne's wife), CL Ratwatte, R.E. Jayathilaka and DB Vadugopitiya contested, and Tamara Kumari Ilangaratne won.

#### **7.4. Ignorance of the law cannot be considered a lapse.**

*In re Abu Bakr-1952 NLR 286*

##### **Background**

MS Abu Bakar contested for the United National Party in the Central Colombo by-election held on May 6, 1950. According to the election results, he got third place and was not elected to the parliament.

According to Section 70 of the Ceylon (Parliamentary Elections) Order-in-Council 1945, the candidate's representative must hand over the campaign expenditure report to the Election Officer within 30 days from the date of publication of the election result in the Gazette. The election results were published in the Gazette on 8 May 1950. The last date to submit the expenditure report was June 7. Petitioner Abu Bakar's representative mailed the statement of expenditure on 7th June, and since 8th June was a public holiday, the Returning Officer received the statement of expenditure on 9th June. The expenditure report was rejected due to the fact that the forms Q and R, which should be attached with the affidavit of the expenditure report, were not submitted with the expenditure report, and this petition was filed with the petitioner Abubakar Supreme Court in the hope of getting the "Supreme Court's pardon."

##### **The decision of the Supreme Court**

Supreme Court Justice SP Dias heard the petition. On September 20, 1980, the judge announced his decision. There, the judge mentioned that in Article 70 of the Order in Council, it is stated that the expenditure report must be transmitted to the Returning Officer within 30 days after the publication of the election results in the Gazette, and transmission is considered to be referred to the Returning Officer. In his decision, the judge accepted that

the expenditure report was transmitted to the Returning Officer within the time prescribed by law as it had been mailed within the prescribed time following the decision of *In Mackinnon v. Clarke* 1[(1898) 2 Q. B. 251.].

However, the judge stated that the petitioner's lawyer did not know about the law as the reason for not sending the Q and R forms with the report of expenses cannot be considered a lapse as stated in Section 70 of the Order-in-Council.

The petition was dismissed by stating that Article 70 of the Order-in-Council does not allow the Supreme Court to grant "authorized pardon" to rectify a mistake of not referencing the Q and R form with the expense report as committed in good faith.

**7.5. Illness of the election agent is not a reasonable reason for not submitting the election expenditure statement correctly.**

*In re C. W. F. A. Jayawardene-1954 NLR-358*

**Background**

C.W.F.A. Jayawardena contested the 1952 parliamentary election and was defeated. According to Article 70 of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, the last date for filing the report on election expenses to be filed within 31 days of the election was 1st July. The petitioner had filed an election expenditure report with his signature on June 28 to the Returning Officer. However, according to the provisions of the Order-in-Council, the expenditure report should be signed by the candidate's representative. On July 14, the Returning Officer informed the petitioner that a person named G.W.H. Jayasinghe had been named as his election agent on April 28, so he should provide the expenditure statement with his signature.



Accordingly, Jayasinghe, the petitioner's election representative, handed over the election expenditure report to the Election Officer on August 1.

Section 75 of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, states that when there is a delay in the delivery of an election expenditure report, the matter should be presented to an election judge or Supreme Court judges, and a decision should be obtained that the delay is reasonable. Accordingly, the relevant Returning Officer has advised the petitioner to get a decision that the relevant delay is reasonable. Therefore, the petitioner filed this petition on 19th August 1952.

### **Petition hearing**

The petition was initially heard by Judge Pulle, and later the petition was heard by Judge Gunasekara.

During the hearing of the petition, the facts were presented that the electoral representative of the petitioner was seriously ill, and as a result, the related election expenses report could not be given on the due date. Medical reports were also presented to confirm these facts. However, it was mentioned in the medical report that the petitioner's election representative was treated for a stomach ailment from June 22 to July 10 by an Ayurvedha doctor. Also, from July 10 to July 20, facts were presented that the election agent was ill.

Nevertheless, the court observed that the election agent of the petitioner had the opportunity to file this election expenditure report till June 22, or there was no hindrance in doing so.

Accordingly, Judge Gunasekara gave the decision of the petition hearing on January 30, 1953, declaring that the reasons given for the delay in submitting the election expenditure report were not acceptable, and the petition was dismissed.

## Chapter Eight

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### **Loss of seat on the grounds of ineligibility**

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Appointment as a public representative and acting as a public representative require qualifications, and there are also disqualifications that prevent doing so. There are legal provisions for removing unfit persons from Parliament. This chapter describes the provisions regarding legal disqualifications to be appointed and act as a Member of Parliament and several case decisions related to the cases where holding the office of MP was challenged based on such disqualifications.

#### **8.1. Qualifications and Disqualifications of a Member of Parliament**

The constitution mentions the qualifications and disqualifications of a member of parliament.

##### **Qualification of a Member of Parliament - Article 90**

Article 90 of the Constitution states that every person entitled to vote is eligible to be a Member of Parliament unless he is disqualified under Article 91.

##### **Disqualifications of a Member of Parliament - Article 91**

Article 91 states that those who are disenfranchised in Article 89 are disqualified from being appointed as members of Parliament or voting in Parliament. Additionally,

- ❖ If nominations are submitted for more than one constituency
- ❖ If nominations are submitted by more than one party

as well as it is stated that any person holding positions mentioned below is not eligible to hold the office of Member of Parliament or to vote in Parliament.

- ➔ The President
- ➔ Government officials
- ➔ Members of independent commissions
- ➔ Members of the armed forces
- ➔ Police officers

Under the 19th Amendment to the Constitution, “a person possessing the citizenship of a foreign country” was also specified as a disqualification to be a Member of Parliament. Still, the 20th Amendment removed that provision from the Constitution.

### **Disqualification to be an elector- Article 89**

- ❖ if he has not attained the age of eighteen years on the qualifying date specified by law
- ❖ if he is under any law in force in Sri Lanka, found or declared to be of unsound mind
- ❖ if he is serving or has during seven years immediately preceding completed serving of a sentence of imprisonment (by whatever name called) for a term not less than six months imposed after conviction by any court for an offence punishable with imprisonment for a term not less than two years or is under sentence of death or is serving or has during seven years immediately preceding completed the serving of a sentence of imprisonment for a term not less than six months awarded in lieu of the execution of such sentence: Provided that if any person disqualified under this paragraph is granted a

free pardon, such disqualification shall cease from the date on which the pardon is granted.

- ❖ if a period of seven years has not elapsed since – the last of the dates, if any, of his convicted of any offence under section 52(1) or 53 of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, or of such offence under the law for the time being relating to Referenda or to the election of the President or of Members of Parliament as would correspond to an offence under either of the said two sections;
- ❖ the last of the dates, if any, of his being convicted of a corrupt practice under the Ceylon (Parliamentary Elections) Order-in-Council, 1946, or of such offence under the law for the time being relating to Referenda or the election of the President or Members of Parliament as would correspond to the said corrupt practice
- ❖ the last of the dates, if any, being a date after the commencement of the Constitution, of a report made by a Judge finding him guilty of any corrupt practice under the Ceylon (Parliamentary Elections) Order-in-Council, 1946, or under any law for the time being relating to Referenda or the election of the President or Members of Parliament;
- ❖ the last of the dates, if any, of his convicted or found guilty of bribery under the provisions of the Bribery Act or of any future law as would correspond to the Bribery Act
- ❖ if a period of five years has not elapsed since - the last of the dates, if any, of his being convicted of any offence under the provisions of sections 77 to 82 (both inclusive) of the Local Authorities

Elections Ordinance or for such offence under any future law as would correspond to any offence under the said sections; or

- ❖ the last of the dates, if any, of his being convicted of an offence under the provisions of sections 2 and 3 of the Public Bodies (Prevention of Corruption) Ordinance or of such offence under any future law as would correspond to the said offence;
- ❖ if a period of three years has not elapsed since – the last of the dates, if any, of his being convicted of an illegal practice under the Ceylon (Parliamentary Elections) Order-in-Council, 1946, or of such offence under the law for the time being relating to Referenda or to the election of the President or of Members of Parliament as would correspond to the said illegal practice;
- ❖ the last of the dates, if any, being a date after the commencement of the Constitution, of a report made by a Judge finding him guilty of any illegal practice under the Ceylon (Parliamentary Elections) Order-in-Council, 1946, or under any law for the time being relating to Referenda or to the election of the President or of Members of Parliament;
- ❖ if a resolution for the imposition of civic disability upon him has been passed in terms of Article 81, and the period of such civic disability specified in such resolution has not expired;
- ❖ if a period of seven years has not elapsed since – the date of his being convicted of any offence under the provisions of sections 188 to 201 (both inclusive) of the Penal Code or for such other offence under any future law as would

correspond to any offence under the said sections,  
or

- ❖ the date of his being convicted of an offence of contempt against, or in disrespect of, the authority of any Special Presidential Commission of Inquiry
- ❖ if the period of his disqualification imposed under Article 116 or Article 111C, [interference with judicial matters as the case may be] has not elapsed
- ❖ Parliament shall by law make it a disqualification for any person to be elected as a Member of Parliament or to sit in Parliament and to vote in Parliament, or to have any relationship of any kind with any contract entered into by or on behalf of the Government or a public corporation. Also, a person having such relation to such agreement shall not be eligible to be elected as a member of Parliament or to sit in Parliament and to vote in Parliament.
- ❖ An insolvent person
- ❖ Convicted of bribery while serving as a Member of Parliament

**8.2. Employing a person convicted of an election corruption offence for election campaign activities before the lapse of 7 years is a reason for losing the seat.**

*Lateef v. Saravanamuttu (1932) 34 NLR 369*

**Background**

The background to this decision was the polling related to the Colombo North constituency in Sri Lanka's first

general election and the subsequent by-election. This election was held under the Ceylon (State Council Elections) Order-in-Council, 1931. The election was held on 13 June 1931, and Dr R. Saravanamuttu won. An election petition was presented against him, and Saravanamuttu was defeated in that election petition, and the councillorship was abolished. He was also found guilty of bribery and undue influence in that election.

It was decided to hold a by-election due to the annulment of the election results in Colombo North. The by-election was held on May 28, 1932, and Dr Saravanmuthu's wife, Nesam Saravanmuttu stood for that election. Nesam Saravanamuttu was defeated there. An election petition was submitted by the petitioner, who was a candidate who contested the election based on the allegation of supporting Dr Saravanamuttu, who was convicted of electoral corruption, for the election campaign of Nesam Saravanamuthu.

### **Election Petition**

According to section 74(d) of the Ceylon (State Council Elections) Order-in-Council, 1931, which is the basis for holding this election, an election judge is satisfied that within seven years of being convicted of an act of electoral corruption, if such convicted person has knowingly used him as his election agent or campaigner, then the said election should be annulled. The petitioner stated in his petition that Dr Saravanamuttu was found guilty of an act of corruption by the judgment related to the 1931 Colombo North election petition and that he was involved in campaigning for his wife's election victory in this election. In this petition, the petitioner alleged that his wife Nesam Saravanamuttu is contesting in this election and has distributed Sinhala, Tamil and English pamphlets appealing to her to vote, and also that Dr Saravanamuttu has been involved in the distribution of

those pamphlets; thus the election petition had asked the election result to be annulled.

### **Decision on the election petition**

The election petition was heard by DALTON Justice: Here, the auditor inquired whether Dr Saravanamutt's activities are relevant to the definition of election campaigner (canvasser) and stated that he is satisfied that the activity is the activity of an election campaigner and that it was done by him personally. Accordingly, it was decided that this election result was null and void.

### **Impact of the decision**

According to the supervisory decision, Nesam Saravanamuthu's councillorship was abolished. Therefore, another by-election was held for the Colombo North constituency. The by-election was held on November 12, 1932, and Nesam Saravanamuttu and MA Kasichetti contested for it, and Nesam Saravanamuttu was re-elected to the State Council by getting 7730 votes.

### **8.3. In proving an election offence, it should be proved by the same burden of proof in a criminal case.**

*Chelvanayagam v. Natesan-1954 NLR 271*

### **Background**

Both Chelvanayagam and Nadesan contested for the Kankasanthurai constituency in the 1952 parliamentary elections. According to the results of that election, Nadesan got 15,337 votes, while Chelvanayagam received only 11,571 votes. The Gazette notification containing the results was issued on 2nd June 1952. Accordingly, Nadesan, who got 3,666 majority votes, was elected as a Member of Parliament.



## **Election Petition**

On 24 October 1952, Chelvanayagam filed an election petition challenging Nadesan's parliamentary seat. There, Chelvanayagam was accused of several election offences made by Nadesan.

- ❖ Committing an act of corruption under section 58(1) (d) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946 by the respondent or any of his agents knowingly and intentionally publishing false and prejudicial statements about the petitioner.
- ❖ An act of corruption under section 58(1) (c) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, by the respondent or his agent knowingly and intentionally publishing papers containing false and defamatory statements about the petitioner without the name or correspondence of the printer or publisher.
- ❖ A corrupt act under section 58(1) (c) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, by the respondent or his agent knowingly and intentionally publishing papers containing false and defamatory statements about the petitioner without the name or correspondence of the printer or publisher.
- ❖ Committing an offence under Section 67(3) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946 by hiring, soliciting or employing vehicles to transport voters by the respondent or his agent.
- ❖ Committing a corrupt act under section 58(1) (d) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946 by entering false information in the

declaration of election expenses to be submitted under section 70 of the Ceylon (Parliamentary Elections) Order-in-Council, 1946.

### **Petition hearing**

Justice De Silva heard the petition. During the hearing of the petition, 79 witnesses gave evidence, 63 witnesses from the side of the petitioner and 16 witnesses from the side of the respondent. The hearing of the petition was also conducted for 79 days.

### **Decision on the election petition**

Judge De Silva gave his decision on July 3, 1954, quoting a statement made by Chief Justice Basnayake in the case of *Aluvihare v. Nanayakkara*, that the burden of proof in an election petition regarding an election offence should be higher than the burden of proof in a civil case, it must be proved beyond a reasonable doubt as in a criminal case, the petition was dismissed citing that the petitioners have not been able to prove any of the allegations made in the petition.

### **8.4. Failure to serve the prescribed period of one year after being sentenced to imprisonment is a disqualification for holding office as a Member of Parliament**

*Peiris V. Samaraweera- 1971-NLR-250*

### **Background**

In the March 1965 parliamentary elections, Percy Samaraweera, who contested from the Welimada constituency, won. However, an election petition was filed against him, and the appointment was annulled. Accordingly, a by-election was held on February 11, 1967.

Percy Samaraweera, James Peiris and Ratnayake Punchybanda contested this by-election. Percy Samaraweera won the by-election. Second place went to James Peirce. An election petition was filed by James Peiris, who claimed that Percy Samaraweera, who had won, was not fit to hold office as Samaraweera had not served his prison sentence and that he should be appointed as the next elected member of parliament.

### **Election Petition**

An election petition was filed stating that according to Article 13(3) of the Rajya Sabha Ordinance of Ceylon (Constitution) Order-in-Council 1946 if a person has been imprisoned for more than three months for an offence punishable with imprisonment for more than 12 months, he is disqualified from becoming a Member of Parliament for seven years from the date of the said decision. Based on this provision, James Silva declared that the 7-year period of imprisonment of Percy Samaraweera has not expired and therefore, as Percy Samaraweera is unfit to be a Member of Parliament, his membership should be revoked, and he who received the highest number of votes should be appointed as the vacant Member of Parliament.

### **Hearing of election petitions**

Justice GPA de Silva heard the petition. During the petition hearing, the respondent did not challenge the fact of imprisonment. The petitioner was sentenced on October 7, 1960. Accordingly, by the date of this by-election, seven years had not been completed.

### **Decision on the election petition**

The decision of the election petition hearing was given on October 6, 1967, by Judge GPA de Silva. It was contended

by the respondent that even after the parliamentary elections held in 1965, an election petition was filed against the respondent, but it was claimed that this point was not raised. The court stated that the fact that this fact was not presented in the petition could not be related to this petition. Accordingly, the court decided that the respondent's appointment should be annulled as he was ineligible to be appointed to the Parliament at the time of the election, and the petitioner's second request to appoint himself as a Member of Parliament was rejected.

As a result of this judgment, a by-election was again held for the Welimada constituency on 17 December 1968, and Percy Samaraweera won in that election too.

### **8.5. Imprisonment and loss of parliamentary seat due to non-expiration of the prescribed period**

*Ellawala v. Wijesundara- 1974 NLR 265*

#### **Background**

The background of this case was the 1970 parliamentary elections. In that election, N.S. Ellawala (Nanda Ellawala) (SLFP) for the Ratnapura constituency, PB Wijesundara (UNP), KP Dharmadasa (Independent) and KP Manissingho (CMP) was done, and Nanda Ellawala was elected to Parliament. He was convicted of an offence punishable by more than 12 months and served a 3-month prison sentence before becoming a member of parliament. The Supreme Court confirmed that decision. He later appealed to the Privy Council and was released on bail. He was again imprisoned on 30 April 1968 after the appeal was rejected by the Privy Council. He was released on 13 July 1968 as per Jail Rules. He was sentenced to 3 months but actually served only 76 days. This election was held under the Ceylon (Parliamentary Elections) Order-in-Council, 1946. Solebury Constitution was in force when the election was held.

### **Election Petition**

According to Section 13(3)(f) of the Ceylon (Parliamentary Elections) Royal Decree 1946, a person convicted of an offence punishable by imprisonment for more than 12 months, if he has served three months of that imprisonment, shall be disqualified from holding office as a Member of Parliament for 7 years from the date of conviction. Accordingly, an election petition was filed against Ellawala, seeking an order disqualifying him from holding the post of Member of Parliament. It was decided to abolish Ellawala's parliamentary seat.

### **Appeal to the Supreme Court**

Ellawala filed an appeal in the Supreme Court against this decision. The appeal was decided by Chief Justice H.N.G. Fernando and Supreme Court Justices C.J. Silva, S.P. and Alas. On June 16, 1971, Chief Justice H.N.G. Fernando announced the decision in the election petition appeal. By that decision, the appeal was rejected by upholding the decision of the election judges who heard the election petition.

Accordingly, Ella lost his parliamentary seat due to the non-fulfilment of the prescribed period of punishment.

### **The outcome of the Supreme Court decision**

According to the decision of the Supreme Court, Nanda Ellawala lost his seat in parliament, so a by-election was held for the Ratnapura constituency; this by-election was held in October 1972. Six candidates, including Nanda Ellawala, Piyadasa Paladagama, and Nanda Ellawala won in that by-election.

**8.6. Contesting the election despite having an agreement with the state corporation is a reason for the membership cancellation.**

*Dahanayake Vs. De Silva (1978-79 -80)1 Sri. L.R 41*

**Background**

The background to this case was the Parliamentary General Election held on July 6, 1977. W. Dahanayake (Independent), Albert de Silva (UNP), Raja Kulathilaka (SLFP) and Mansoor Marikkar (LSSP) contested for the Galle constituency in this election. According to the results of that election, Albert de Silva won, and Vijayananda Dahanayake was voted second. Albert Silva, who won the election, was elected to Parliament. Later, an election petition was submitted alleging that Albert de Silva was unfit to act as a member of Parliament due to his work as a representative of the Insurance Corporation and the Petroleum Statutory Corporation. This election was conducted in accordance with the provisions of the Ceylon (Parliamentary Elections) Order-in-Council 1946. The election judge who examined the election petition dismissed the petition, and the petitioner, Vijayananda Dahanayake appealed to the Supreme Court against that decision.

**Election Petition**

The successful candidate, Albert Silva, had a business agreement with the government by working as a sales and distribution agent of the state-owned Petroleum Statutory Corporation. The petition sought to cancel his appointment as a Member of Parliament on the grounds that he was a person unfit to hold the office of a Member of Parliament in accordance with Section 77(e) of the Ceylon (Parliamentary Elections) Order-in-Council 1946 on the ground that he is the Galle representative of the Ceylon Insurance Corporation.

### **Hearing of election petitions**

Justice Kader heard this election petition. The petitioners submitted to the court that the respondent had been appointed as the Galle representative of Ceylon Insurance Corporation on June 4, 1967, and according to the said appointment agreement, a party desiring to terminate the agreement should send a notice of withdrawal to the other party one month in advance. The date of acceptance of nominations for the Galle constituency was 6th June 1977. On June 1, the respondent sent a letter to the Manager (Life) of Ceylon Insurance Corporation and informed that he would resign from the position of the insurance agent as he was contesting the election. The insurance corporation sent a reply letter on July 6 and informed that the above resignation is accepted.

By an agreement signed by the respondent on December 11, 1966 and by the Petroleum Statutory Corporation on September 8, 1968, the respondent was appointed as an agent for the sale and distribution of petroleum. According to the agreement, a written notice had to be given to the petroleum legal corporation three months before the termination of the agreement. The respondent sent a letter to the Chairman of the Petroleum Statutory Corporation on May 27 and requested that he has decided to terminate his representative office and transfer his representative position to his wife's name. Also, on June 3, the respondent sent another letter to the manager in charge of Southern Province to speed up these activities. Later on June 5, the petitioner sent a telephonic message to cancel his contract. In a letter on the same day, the respondent informed the Petroleum Statutory Corporation to terminate its agreement.

The decision of Judge Kader, who heard the election petition, was that the respondent had resigned from the position of representative of Ceylon Insurance

Corporation, and also, because the respondent was a candidate, he had taken all possible steps to terminate the business agreement with the statutory petroleum corporation, and the respondent was penalized by the non-termination of the agreement due to the corporation's delay. That should not be done. Accordingly, the petition was dismissed.

### **Appeal to the Supreme Court**

Dissatisfied with the decision of the Election Judge, the petitioner filed an appeal to the Supreme Court against that decision. The appeal was heard by a bench comprising Chief Justice Neville Samarakoon and Supreme Court Justices Samarawickrama and Vanasundara. On September 10, 1979, Chief Justice Neville Samarakoon, with the other two judges' concurrence, announced the appeal hearing decision. The judge primarily emphasized the issues to be resolved by the Supreme Court. Accordingly;

- ❖ Is the day of polling or the date of submission of nominations considered the date of the election?
- ❖ Does Article 12 of the Constitution, read with Articles 70, 73, and 75, create disqualification of an individual from an existing contract with any corporation?
- ❖ Whether the petitioner is entitled to relief by the provisions of the 1972 Constitution from the disqualifications mentioned in the Solebury Constitution?
- ❖ Are the first respondent's two contracts legally binding?
- ❖ Are these two corporations considered public corporations or government departments?



- ❖ Does the 1st respondent have the right to terminate its contracts unilaterally?

The judge who considered the facts stated that since the insurance corporation had concluded the agreement at the respondent's request, he did not have an agreement with the insurance corporation at the relevant time.

However, after looking at the documents of the petitioners and the notes of the Petroleum Statutory Corporation as well as the foreign judgments, the Judge stated that the agreement of the Respondent with the Petroleum Statutory Corporation had not been terminated by the date of the poll; thus the date of the election was July 21, 1977. At the time, the judge decided that the respondent was unfit to hold a position as a member of parliament, and the appeal was accepted by annulling the decision of the election judge.

#### **The outcome of the Supreme Court decision**

According to this decision, Albert de Silva's MP was abolished. Therefore, it was decided to hold a by-election for the Galle constituency. Accordingly, for the Galle constituency by-election held on December 20, 1979, Vijayananda Dahanayake (UNP), Sarath Wickrama Dias (SLFP), Lionel Bopage (JVP) KP Piyadasa (Independent) and B.B. Perera (Independent) candidates appeared. Vijayananda Dahanayake, the petitioner, in this case, contested as an independent candidate in the July 1977 parliamentary elections and won the contest by representing the United National Party in this by-election.

### **8.7 Failure to properly resign from public service is a reason for the abolition of the office of Member of Parliament.**

*Abeywickrem a v. Pathirana-(1986)-1-Sri.L.R-120*

## **Background**

The respondent, Richard Pathirana, was a Principal of Class III in the Department of Education. His appointing authority was the Education Service Committee appointed under Article 57(1) of the Constitution. He served as the Principal of Iduruwa Galaboda Athruwella Maha Vidyalaya in Galle District. He was a government official with an annual salary of more than 6720. He submitted his resignation to the Galle Regional Education Director on April 12, 1983, to run for the by-elections held in 1983. It was stated that he would resign from the relevant positions on April 21, 1983, as he intended to stand as a candidate for the upcoming elections and accept it. It was approved by the Zonal Director, adding a note as “approved”. Copies of the resignation letter were forwarded to the Secretary of the Ministry of Education and the Acting Principal of the school where he worked, and he had not received his salary since March 1983. The Director of Galle Zonal Education had appointed a person named Janananda as the acting principal of the school concerned.

Richard Pathirana was nominated for the by-election on 22 April 1983 and was elected as a Member of Parliament in the election held on 18 May 1983.

## **Election Petition**

The petitioner stated that the respondent Richard Pathirana had not formally retired from public service at the time of contesting the parliamentary elections; he is ineligible to hold the office of a Member of Parliament in accordance with Article 91(1)(d)(iii) of the Constitution.

***Supreme Court's Constitutional Interpretation***  
***Abeywickrema v. Pathirana [1984] 1 Sri L.R 215***

At the commencement of the hearing of the petition, the first respondent raised a fundamental objection that the Election Judge has no jurisdiction under Article 55(5) of the Constitution to inquire into the validity of the acceptance of the letter of resignation submitted by the first respondent to the Galle Regional Director of Education. Accordingly, to obtain a constitutional interpretation under Article 125(1) of the Constitution, it was referred to the Supreme Court by the Court of Appeal Judge G.P.S. Da Silva.

This inquiry was registered under the S.C. Reference No.3/83 Election Petition No.5/1983, and the inquiry was conducted by Chief Justice Sharwananda and Supreme Court Justices Vanasundara and Ranasinghe. The question to be resolved by the Court of Appeal before the Supreme Court was whether an order or decision accepting the resignation of a public official cannot be questioned in the exercise of the jurisdiction of the Court of Appeal in hearing an election petition due to the provisions of Article 55(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka. At the end of the inquiry, Chief Justice Sharwananda announced the order on January 10, 1984, with the concurrence of the other judges. In this petition, the question asked is that because resignation is an acceptance, it does not fall within the ambit of Article 55(5) of the Constitution. Also, it is insufficient to fulfil the constitutional requirements related to the representation required by Article 58(1). Accordingly, the Supreme Court ordered the Court of Appeal to hear the relevant petition (*Abeywickrema v. Pathirana* (1984) 1 Sri L.R. 215).

**The decision of the Court of Appeal**

On the order of the Supreme Court, the Court of Appeal resumed the petition hearing. The petitioners stated that

the respondent had not formally resigned from public service as he had submitted his resignation to the Zonal Director of Education and not to the respondent's appointing authority. The Judges who heard the petition gave their judgment on February 25, 1985, dismissing the election petition as the respondent had retired from public service with effect from April 21, 1983.

### **Appeal to Supreme Court**

Dissatisfied with the decision on the election petition, the petitioner appealed to the Supreme Court. Chief Justice Sharwananda and Supreme Court Justices Vanasundara, Ranasinghe, Athukorala and LH de Alwis heard the appeal.

Ranasinghe, Athukorala and LH de Alwis in concurrence of Supreme Court Justices in a judgment issued on 31 January 1986 by the Chief Justice. Chief Justice Sharwananda stated that as the respondent is a government employee receiving an annual salary of more than 6720 rupees, he should formally resign from the said government service before contesting for Parliament. The letter of appointment dated 31st July 1974 to the respondent stated that the Institutions shall be subject to the orders of the Public Service Commission, the Institutions Code, the Financial Regulations and the orders issued by the Government from time to time. According to the Establishment Code, a resignation should be submitted to the Appointing Authority. The appointing authority of the respondent is the Education Service Committee. Accordingly, it was decided that the respondent had not resigned from public service in due course and the appeal would be accepted and accordingly, it was declared that the parliamentary seat of the respondent would be abolished.

Judge Vanasundara, who gave a decision contrary to this, stated that the respondent's resignation was not addressed to the proper authority. Still, the relevant

officials acted accordingly, so the respondent's position as a Member of Parliament should not be abolished. However, on the majority's decision, the respondent's membership was abolished.

### **The outcome of the Supreme Court decision**

According to the decision of the Supreme Court, Richard Pathirana's parliament membership was abolished, so another by-election was held on 17 April 1986 for the Akmeemana constituency. For the by-election, Richard Pathirana contested for the Sri Lanka Freedom Party and Albert de Silva (Respondent of the case of Dahanayake Vs. De Silva (1978-79 -80)1 Sri L.R 41) contested for the United National Party. In addition to the said two candidates, ten more candidates contested the said by-election, and Richard Pathirana won in that by-election. (Chandrananda de Silva. 1987. Colombo 25)

### **8.8. The candidate's name cannot be removed from the electoral roll on the ground that an agent has been convicted of corruption.**

*Rajapakse v. Kularatne and others (1988) 2 Sri L.R. 382*

### **Background**

Ananda Kularatne representing the United National Party, and Chamal Rajapaksa representing the Sri Lanka Freedom Party, competed in the Mulkirigala constituency by-election held on September 12, 1985. According to the election results, Ananda Kularatne won. The reason for holding this by-election was that Basil Rajapaksa, a supporter of Ananda Kularatne who won the by-election held on May 18, 1983, made false statements in a way that harmed the character of Nirupama Rajapaksa who contested that election from the Sri Lanka Freedom Party and as a result, an election petition was brought related to the said statement and

eventually annulled Ananda Kularatne's membership. (For details about this decision, see- 9.9. False election campaign by a candidate's representative is a reason for losing the seat). Then Ananda Kularatne filed a writ petition against the action of the Election Commissioner and the District Returning Officer to remove Ananda Kularatne's name from the voter list, where the Court of Appeal referred the case to the Supreme Court for a constitutional interpretation. The Supreme Court decided that Ananda Kularatne's name should not be removed from the voter list. (For details on this Supreme Court decision, see - 9.10. A candidate is not disqualified from voting by an act of corruption by an agent).

Accordingly, the nomination of Ananda Kularatne was accepted for the second by-election of Mulkirigala. Chamal Rajapaksa contested for the Sri Lanka Freedom Party in this election. According to the result of the by-election held on September 12, 1985, Ananda Kularatne won again. Chamal Rajapaksa filed an election petition challenging the appointment of Ananda Kularatne.

### **Election Petition**

In the case of Election Petition No. 1/1985-Electoral District No 75 – Mulkirigala registered at the Court of Appeal by this petition, the petitioner alleged that the first respondent Ananda Kularatne will be disqualified from contesting an election for up to 7 years based upon the election judge's report in the Supreme Court case of Kularatne v. Rajapaksha- 1985-1-Sri.LR-24.

The judges who heard the election petition gave their decision on March 26, 1986. The judge thereby declared that the decision of case 112/85 filed by the first respondent against the removal of his name from the electoral registry was based on a decision of the Supreme Court and therefore dismissed the election petition as that decision bound him.

## **Appeal to Supreme Court**

Dissatisfied with the decision of the election judge, the petitioner appealed to the Supreme Court against the decision. That appeal was registered as ELECTION PETITION NO. 1/1986 (Election Petition No. 1/1985-Electoral District No 75 – Mulkirigala). The Supreme Court decided to hear this appeal before a Full Bench of the Supreme Court under Article 132(3) of the Constitution as it involved an important legal argument. Accordingly, the appeal was heard before Chief Justice Sharwananda and the Supreme Court justices Vanasundara, Colin Thome, Ranasinghe, Athukorala, Thambaiah, LH De Alvis, Senaviratne and HAG De Silva.

At the appeal hearing, two primary contentions were raised on behalf of the first respondent. Those are;

- ❖ Supreme Court bound by judicial decisions.
- ❖ Under Article 125 of the Constitution, the Supreme Court is bound by the decision given on July 2, 1985, exercising the powers of interpretation of the Constitution.

However, the full bench of the Supreme Court unanimously rejected the initial objection and decided to grant leave to proceed and hear the appeal.

## **Supreme Court decision**

On 26th November 1987, Chief Justice Sharwananda announced the unanimous decision of the other seven judges except Justice Vanasundara. The Chief Justice focused on the provisions of the Ceylon (Parliamentary Elections) Order-in-Council 1946, the 1978 Constitution, and the 1972 Constitution regarding the disqualifications

of being a Member of Parliament and the loss of civil rights.

Also, the judge who paid attention to the provisions of Great Britain's Representation of the Peoples Act 1949 pointed out that when the candidate commits a corruption offence personally, he is ineligible to be elected to the House of Commons for up to 10 years. When the candidate commits corruption through a representative, he is ineligible for seven years. It was also claimed that he would be disqualified from being appointed to the People's Council. The Judge pointed out that such a different provision does not exist in the law of Sri Lanka, and the qualifications and disqualifications of a member of parliament are mentioned in articles 89 and 90 of the constitution, and accordingly, Articles 89 and 90 of the Constitution should be examined to determine whether the 1st respondent is eligible to be a member of parliament or not. It was also pointed out that according to these provisions, the 1st respondent is not disqualified from holding the office of Member of Parliament. Accordingly, the appeal was dismissed.

### **8.9. Doing business with government institutions is a disqualification to hold a member of Parliament**

*Dilan Perera v. Rajitha Senarathne (2000) 2 Sri L.R. 79*

#### **Background**

Dilan Perera is a Member of Parliament who contested and was elected for the Badulla district representing the People's Alliance in the parliamentary general election held on 16th August 1994. Rajitha Senaratne was a Member of Parliament appointed from the national list of the United National Party in that election. MP Dilan Perera, who alleged that a company of which MP Rajitha Senaratne is a director is doing business with the



government, filed a petition to revoke Rajitha Senaratne's membership, saying that according to the constitution, a person who does business with the government is unfit to hold a position as a member of parliament.

### **Writ Petition**

The petition named MP Rajitha Senaratne as the first respondent, the Secretary General of the United National Party as the second respondent, and the Secretary General of the Parliament as the third respondent.

A writ of quo warranto and a writ of mandamus restraining the first respondent from sitting or voting in Parliament in terms of Article 91(1)(e) of the Constitution as the first respondent has entered into contracts for the supply of dental equipment with government agencies after becoming a Member of Parliament. The petitioner filed a writ petition with the Court of Appeal in 1998 seeking to issue against the respondent Parliamentary Secretary General.

### **Petition hearing**

Court of Appeal Judges Hector Yapa and De Silva heard the petition in September, October and November 1999.

Senaratne Medical Suppliers (Private) Limited company submitted several contracts for the supply of dental equipment to the court. According to the said agreement, Senaratne Medical Suppliers (Private) Ltd. has been doing business with the government since 1985. The petitioner stated that the said business had been done beyond the 25th of August 1998.

Also, on December 11, 1999, "Senaratne Dental Supplies (Private) Limited Company" was registered under the Companies Act. The Company's Certificate of Registration, Articles of Association and Articles of Incorporation of the Association, were submitted to the

court. Accordingly, the petitioner pointed out that the first respondent is a company director.

The petitioner submitted documents that on 16 November 1995, the said company had signed a contract for the supply of health equipment to the Ministry of Health, Highways and Social Services along with Sush Dent (India) (Private) Limited (M/s Suz-Dent (India) Pvt. Ltd.)

The petitioner also submitted to the court the documents related to the supply of medical equipment by the same company to the pharmacy and the Navy, and the Sri Lanka Air Force. Thus, after August 1995, the first respondent has no power to act as a Member of Parliament in terms of Article 91(1)(e) of the Constitution and, in this case, Article 101(2) of the Ceylon (Parliamentary Elections) Order-in-Council 1946, and Article 13(3) of the Solebury Constitution.

The first respondent contended that Article 91(1)(e) of the 1978 Constitution provides that no person shall be qualified to be elected as a Member of Parliament or to sit and vote in Parliament if he has any such interest in any such contract made by or on behalf of the State or a public corporation as Parliament shall by law prescribe and in such a case the Member of Parliament will be abolished, but so far the Parliament has not enacted such a law.

It was also argued that the Ceylon (Parliamentary Elections) Order-in-Council 1946 has been entirely repealed by the Parliamentary Elections Act and the Voters Registration Act. Accordingly, the first respondent argued that there is no legal provision to abolish the position of Member of Parliament due to doing business with the government.

## **The decision of the Court of Appeal**

With Justice De Silva's concurrence, the Court of Appeal's decision was announced by Justice Hector Yapa on March 31, 2000.

According to Article 101(2) of the Constitution (Article 101(2) – the Ceylon (Parliamentary Elections) Order-in-Council, 1946, as amended from time to time, shall apply with necessary modifications and subject to the provisions of the Constitution until Parliament makes provision for such matters by law. The Ceylon (Parliamentary Elections) Order-in-Council, 1946, has not been fully withdrawn. The Voters Registration Act No. 44 of 1980 and the Parliamentary Elections Act No. 1 of 1981, have amended only the provisions relating to the election process. Accordingly, Section 77 of the Ceylon (Parliamentary Elections) Order-in-Council, 1946 deals with the disqualifications of a Member of Parliament. According to the decision in the case of *Dissanayake V De Silva* (1978-79-80) 1Sri L.R. 41) decided under the 1972 Constitution, and the provisions regarding the disqualification of members of parliament of Article 13(3)(c) of the Soulbury Constitution. Under Article 13(3) (c) of the Soulbury Constitution, doing business with the Government is a cause of disqualification. Article 168(1) of the 1978 Constitution (Article 168(1))- until the Constitution comes into force, unless otherwise expressly provided in the Constitution. All existing laws, written and unwritten laws, shall continue to be in force with necessary modifications unless Parliament otherwise provides). Accordingly, the Court held that the decision in the case of *Dissanayake vs De Silva* is part of the law in force. Therefore, a Writ of quoranto was issued to revoke the first respondent's office as a Member of Parliament for doing business with the government, which is a disqualification for holding the position of Member of Parliament as per Article 13(3)(C) of Soulbury

Constitution). A writ of mandamus was issued to the 3rd Respondent, the Secretary General of Parliament, to prevent the first respondent from sitting in Parliament as a Member of Parliament.

### **The outcome of the Supreme Court decision**

Rajitha Senaratne's membership was abolished according to the Supreme Court decision. The Election Commissioner informed the Secretary of the United National Party to nominate a suitable person for the post of National List Member of the United National Party elected from him, and the United National Party nominated the name of Rajitha Senaratta to the Election Commissioner and accordingly he was once again appointed as a Member of Parliament.

#### **8.10. Court-martial is also included in the Constitution's definition of courts in Article 89(d).**

*Gardiheewa Sarath C. Fonseka v. Dammika Kithulegoda*  
SC REF No: 1/2010 S.C.M: 10.01.2011

### **Background**

Petitioner Sarath Fonseka contested for the Colombo District from the Democratic National Front in the Parliamentary General Election held on 8th April 2010 and was accordingly elected to Parliament. The petitioner was sworn in as a Member of Parliament on 24th April 2010. The petitioner was sentenced to 30 months in prison by the court-martial installed under the Army Act on 17th September 2010, and the President approved the sentence on 29 September 2010. The Secretary-General of Parliament notified him that his term of office had come to an end. Lakshman Nipuna

Arachchi, who got the next preference for him, was announced as a Member of Parliament on October 8, 2010, through an extraordinary gazette. Sarath Fonseka filed a writ petition in the Appeal Court against this decision.

### **Writ Petition**

In the writ petition filed in the Court of Appeal on 12 October 2010, the Parliamentary Secretary General, Deputy Secretary General of Parliament, Election Commissioner, Colombo District Returning Officer, Commissioner General of Prisons, Army Commander, MP Laxman Nipuna Arachchi appointed on behalf of the petitioner's vacated MP and the Attorney General from respondents 1. 8 respectively, to issue a writ of summary judgment quashing the decisions taken to revoke the petitioner's membership. The petitioner also requested the Court of Appeal issue a writ of mandamus declaring the petitioner a duly elected Member of Parliament.

### **Hearing of writ petitions**

During the hearing of the petition, the Hon. Attorney General had pointed out that the petitioner's parliament membership was vacant due to the operation of Article 89(13) (b), to be read with Article 66(d) of the Constitution.

(if he is serving or has during seven years immediately preceding completed serving of a sentence of imprisonment (by whatever name called) for a term not less than six months imposed after conviction by any court for an offence punishable by imprisonment for a term not less than two years or is under sentence of death or is serving or has during the period of seven years immediately preceding completed the serving of a sentence of imprisonment for a term not less than six

months awarded in lieu of the execution of such sentence)

However, if an unconditional pardon is granted to any person disqualified under this paragraph, that disqualification shall cease from the date of the pardon. - Article 89(d) of the Constitution)

Therefore, the vacancy has been filled in terms of Article 99(13)(b) of the Constitution. Here, the petitioners challenged whether the military court is included in the definition of court mentioned in Article 89 of the Constitution. For this interpretation, the provisions under Article 125 of the Constitution were referred to the Supreme Court.

### **Interpretation of the Supreme Court**

Chief Justice JAN de Silva and Dr Shirani Bandaranaike inquired about this in the Supreme Court and by a five-judge bench comprising Supreme Court Justices including Gamini Amaratunga, Salim Marsuf and K Sri Pawan. After two days of hearing and written arguments, the decision of the Supreme Court was announced on January 10, 2011.

At the end of the lengthy judgment prepared by the Chief Justice, it was decided that the military court has the power to impose the death penalty and imprisonment as per Section 133 of the Army Act and according to Article 13(4) of the Constitution, the court stated that such power exists only in duly established courts. Accordingly, the Supreme Court interpreted that the courts mentioned in Article 89(d) of the Constitution include the military court.

### **The result of the decision**

According to this decision, it was confirmed that the petitioner Sarath Fonseka's membership was abolished. In October 2010, Lakshman Nipuna Arachchi of that party, who the Election Commissioner appointed to replace Sarath Fonseka under Section 64(2) of the Parliamentary Elections Act, abstained from coming to Parliament for three months on the decision of that party and his The membership was abolished. After that, the Election Commissioner appointed Jayantha Katagoda as a Member of Parliament under Section 64(2) of the Parliamentary Elections Act on February 7, 2011, through Special Gazette No. 1692/1.

#### **8.11. Loss of parliamentary seat on foreign citizenship**

*Geetha Samanmali Kumarasinghe v. N.W.E. Buwaneka Lalitha SC/SPL/LA/109/2017 S.C.M. 2.11.2017*

##### **Background**

The 2015 parliamentary elections were held under the 19th Constitutional Amendment. According to Article 91(1)(d) of the Constitution as amended up to the 19th Constitutional Amendment, "being a citizen of Sri Lanka who is also a citizen of another country" is a disqualification for holding a Member of Parliament. Geetha Kumarasinghe was nominated from the Galle district for this election. She received 63,955 votes (Election records) in the election and won. Election Commissioner issued a gazette notice that she was elected as a member of parliament. Accordingly, she took oath as a member of parliament and participated in the proceedings of the parliament. The fact that she is a dual citizen of Sri Lanka, as well as a citizen of Switzerland, was popular since the time of the elections.

**Writ submitted to the Court of Appeal: CA (Writ)  
Application 262/2015**

A writ was filed in the Court of Appeal challenging Geeta Kumarasinghe's membership of the Parliament as she has citizenship in another country.

In this petition submitted by Bhuwaneka Lalith and four others who were voters of the Galle district, the following reliefs were requested from the Court of Appeal.

- ❖ To issue a writ of quo warranto ordering Geetha Kumarasinghe to show how she has the power to hold the position of Member of Parliament,
- ❖ To issue a writ of quo warranto that Geeta Kumarasinghe is disqualified from holding the office of Member of Parliament
- ❖ From 17-8-2015 to 1-9-2015, to issue an order to the Immigration Controller to submit the documents related to Geeta Kumarasinghe's citizenship to the court.
- ❖ To pay costs

Geeta Kumarasinghe, Controller of Immigration, General Secretary of the United People's Freedom Alliance, and the General Secretary of the Parliament were named as respondents in this writ petition. President Counsel Vijith Malalgoda, the President of the Court of Appeal, and Justice Preethi Padman Surasena of the Court of Appeal heard the petition. The first respondent, Geetha Kumarasinghe, rejected the petitioners' demands and requested the court to reject the petition on the following grounds.

- ❖ This Court has no jurisdiction to revoke the office of Member of Parliament
- ❖ The office of elected members can be questioned only through an election petition.
- ❖ The petitioners have no jurisdiction (Locus Standi) to file this suit.
- ❖ Courts cannot question or impeach a process of Parliament



The petitioners have failed to prove through documents the dual citizenship of the petitioner. According to the court orders, the immigration controller had submitted the facts in affidavits to this petition. Accordingly, according to the reports of the Immigration Department, the following facts were presented to the court.

- ❖ The first respondent was registered as a Sri Lankan/Swiss dual citizen on 29-08-2006.
- ❖ A dual citizenship certificate was issued to the first respondent on 19-09-2006.
- ❖ On 30-10-2015, she applied for a diplomatic passport and requested not to mention her dual citizenship.
- ❖ The first respondent produced a letter dated 11-09-2015 issued by the Swiss Citizenship Service, which stated that Geetha Samanmali had been released from Swiss citizenship.
- ❖ By this letter, the first respondent has been directed to produce evidence as to whether she has been stripped of her full Swiss citizenship.
- ❖ However, the first respondent did not respond to the instructions of the Attorney General.

In the 4th chapter of the letter dated 2015-9-11 submitted by the respondent, it was stated that the “Swiss Citizenship Services and Registration Office informs that the Swiss citizenship will be completed after the release by the Municipal Council.”

### **Appellate Court order**

According to the order issued by Justice Prithi Padman Surasena on May 3, 2017, with the concurrence of justice President's Counsel Vijith Malalgoda, the President of the Court of Appeal, the court decided that the first respondent is a dual citizen. The Court of Appeal dismissed the first respondent's other objections and issued a writ of quo warranto revoking the first

respondent's parliamentary seat. Also, the Attorney General was directed to collect the fines to be charged under Article 100 of the Constitution for holding it while being disqualified from being a Member of Parliament.

### **Appeal to the Supreme Court - SC/SPL/LA/109/2017**

Dissatisfied with the Court of Appeal decision, the first respondent Geetha Kumarasinghe filed an appeal to the Supreme Court on May 9, 2017, against that decision.

The appeal petition was adjudicated by a five-judge bench of the Supreme Court comprising Chief Justice President Counsel Priyasath Dep and Justices President Counsel Bhuvaneka Aluvihare, Sisira de Abreu, Anil Gunathila and Naleen Perera.

After hearing the appeal, the Supreme Court decision was given on November 2, 2017. Justice Sisira de Abreu, in concurrence with other judges, gave the Supreme Court decision. Accordingly, the Supreme Court upheld the decision of the Court of Appeal, which decided that Geeta Kumarasinghe still had Swiss citizenship at the time of her candidacy and rejected the appeal request.

### **The outcome of the decision**

According to that decision, the Secretary General of the Parliament informed the Election Commissioner that Geeta Kumarasinghe's seat as a Member of Parliament was cancelled, and Piyasena Gamage, who was the candidate having the next highest preferential votes from the Sri Lanka Podujana Peramuna Party from Galle District, became a Member of Parliament in accordance with Article 99, Article 13(b) of the Constitution, and it was announced by the Election Commissioner on November 8, 2017, through Gazette No. 2044/27. The 20th Amendment added to the Constitution in 2020 removed the disqualification of a Sri Lankan citizen with foreign citizenship from running for election, which was

added to the Constitution by the 19th Constitutional Amendment.

**8.12. A person who has not lost his position as a Member of Parliament has the right to be sworn in as a Member of Parliament.**

Halkandaliya Lekamalage Premalal Jayasekera v. Thushara Upuldeniya Commissioner General of Prisons and Others - C.A (Writ) Application No.295/2020 CA.M 07.09.2020

**Background**

Petitioner Premalal Jayasekara was nominated by the Sri Lanka Podujana Peramuna to contest for the Rathnapura district in the parliamentary general election held on August 5, 2020. After giving the nominations, before the election i.e. on July 31, 2020, the Rathnapura High Court gave the death sentence to the petitioner giving the verdict in a murder case No. 71 of 2016, which was pending at that time. Accordingly, the petitioner was admitted to the Welikada jail, and the petitioner was released on August 4, 2010. An appeal was filed in the Court of Appeal against the High Court decision.

In the parliamentary election held on 5th August, the petitioner was elected to the Parliament by obtaining 142,037 votes and secured the 2nd position from Rathnapura district. The President convened Parliament on August 20, 2020. The Attorney General, in his letter dated 21st August 2020 and 19th August 2020, had also instructed the Secretary of the Ministry with copies to the Commissioner General of Prisons that the petitioner is not allowed to participate in the parliamentary sessions.

The petitioner submitted a writ petition to the Court of Appeal requesting to issue an order allowing him to appear for the Parliament sessions.

### **Petition hearing**

The petition was filed challenging the Attorney General's letter, and the petition named the Commissioner General of Prisons, the Superintendent of Welikada Prison and the General Secretary of the Parliament as respondents. The petition was heard by Justices AHMD Nawaz, President of the Court of Appeal and Judge Sobhika Rajakaruna of the Court of Appeal.

The Deputy Solicitor General, who appeared on behalf of the Attorney General at the hearing of this petition, stated that the petitioner is disqualified from sitting in Parliament as a Member of Parliament and from voting in Parliament.

### **Interim order of the Court of Appeal**

On September 9, 2020, the interim order of the Court of Appeal was given by the President of the Court of Appeal, with the concurrence of Justice Sobhika Rajakaruna. Also, the issue of sitting and voting does not arise before us, and it is the task of the Speaker or any other authorized body to decide on it; what we have before us is challenging the letter preventing the petitioner from coming to Parliament and rulings regarding the conduct of members and others in relation to Parliament. It was stated in its interim decision that the parliament has the full right to take decisions.

Accordingly, the judge pointed out that no provision in Articles 89 and 91 of the Constitution prohibits an elected member of parliament from taking the oath and thus stated that if the election as a member of parliament is valid and not subject to error, a declaration of invalidity can be given by a competent court and not by a letter

from the prison commissioner. Accordingly, requests C and E mentioned in the petition were allowed.

### **Effect of the interim order**

According to this interim order, MP Premalal Jayasekara was sworn in as a Member of Parliament on September 8, 2020.

### **Postscript**

The appeal filed by Premalal Jayasekara to the Court of Appeal against the judgment of the Ratnapura High Court No. CA Appeal No: CA/HCC/67-69/20 was heard before the Judges of the Court of Appeal N. Bandula Karunaratne and R. Gurusinghe, and on March 31, 2022, Judge Karunaratne gave the decision on the concurrence of Justice Gurusinghe and thus, Premalal Jayasekara was acquitted of all charges, setting aside the High Court decision.

### **8.13. Imprisonment for contempt of court is also a disqualification for MP.**

*Ranjan Ramanayake v. Secretary General of Parliament  
CA (Writ) Application No. 52/2021 C.A.M. 5.04.2021*

### **Background**

Petitioner Ranjan Ramanayake sworn in as a Member of Parliament in the Parliamentary General Election held on August 5, 2020, contesting for the Gampaha District from Samagi Janabalawegaya Party. At this time, a case regarding contempt of court against Ranjan Ramanayake was pending in the Supreme Court. (SC Rule No. 1/2018; Ranawaka Sunil Perera vs Sadda Vidda Rajapakse Palanga Pathira Ambakumarage Ranjana Leo Sylvester Alphonsu alias Ranjan Ramanayaka) The decision of the petition hearing was announced on January 12, 2021. By

that decision, Ranjan Ramanayake was convicted of contempt of court and sentenced to 4 years in prison.

Ranjan Ramanayake came to know that according to this judgment, the General Secretary of the Parliament will inform the Election Commissioner that Ranjan Ramanayake's seat has become vacant. Accordingly, Ranjan Ramanayake filed a writ petition to the Court of Appeal against the vacating of his seat.

### **Writ Petition**

In this petition submitted by Ranjan Ramanayake to the Court of Appeal on February 01, 2021, the Secretary General of Parliament and the Attorney General were named as the first and second respondents. The petitioner has learned through the media that the Attorney General has advised the first respondent, the Parliamentary Secretary General, that the petitioner's parliamentary seat is vacant due to the punishment. Reliable information has been received that in accordance with the Parliamentary Elections Act No. 1 of 1981, efforts are being made to inform the Election Commissioner that the petitioner's parliamentary seat has become vacant. The petitioner had stated in his petition that;

Through the petition, he emphasized that being punished for contempt of court is not a reason for the abolition of the parliamentary seat. Accordingly, in his petition, the petitioner requested the Court of Appeal,

- ❖ To prevent the first respondent Parliamentary Secretary from notifying the Election Commissioner that the petitioner's seat has become vacant or to issue a writ of prohibition to prevent the same.
- ❖ To issue an interim restraining order preventing the first respondent from notifying the Election Commissioner that the position of MP has

become vacant until the hearing of this petition is over.

### **Petition hearing**

The petition was heard by the President of the Court of Appeal, Justice Arjuna Obeysekera and Justice Mayadunna Koraya. Two primary arguments were advanced by the petitioner. The first argument was that punishment for the offence of contempt of court is not a punishment under Article 89(d) of the Constitution for disqualification. The second argument states that the disqualification for holding the office of the Member of Parliament is that an offence punishable with imprisonment of more than two years is punishable by imprisonment of more than six months. As Article 105 of the Constitution, which includes provisions regarding contempt of court, does not extend to the term of imprisonment, it is not disqualified by being convicted of such an offence.

### **Court of Appeal decision**

With the concurrence of Judge Mayadunna, the President of the Court of Appeal, Judge Arjuna Obeysekera, gave the judgment of the petition hearing on April 5, 2021. Section 105(3), which includes the provision of contempt of court. Having paid attention to the point that “the Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, ...” emphasis was also placed on the interpretation that the term "criminal offence" in Section 2 of the Criminal Procedure Code means any act or

omission punishable by any law in force in Sri Lanka at the time. Also, the Supreme Court decision regarding the petitioner's contempt of court also states that contempt of court is a punishable offence. Accordingly, the court held that contempt of court is an offence under Article 105(3) and can be punished with a fine or imprisonment. Accordingly, the court rejected the petitioner's argument that the punishment given to the petitioner does not disqualify him under Article 89(d) of the Constitution. Also, the court rejected the petitioner's request, saying that since the first respondent is performing work assigned to him, it is not possible to issue a writ of prohibition in accordance with the administrative law of Sri Lanka.

### **Effect of the decision of the Court of Appeal**

After that decision, the Secretary General of the Parliament informed the Election Commissioner that the petitioner's seat was vacant. Ajith Mannapperuma, who was the most preferred candidate from the Samagi Jana Balawegaya party from Gampaha district, was elected as a Member of Parliament in accordance with Article 99, Article 13(b) of the Constitution. Thus it was announced by the Commissioner vide Gazette No. 2222/41 dated 08 April 2021.

### **8.14 Late appointment to a National List Member of Parliament shall not be a ground for a loss of seat.**

*Nagananda Kodithuvakku v. election Commission and 10 others (S.C.F/R No. 205/2022 S.C.M. 19.07.2022)*

### **Background**

In the parliamentary elections held in August 2020, the United National Party obtained 246,435 votes and accordingly, the party was awarded a National List



Member of Parliament (Election Commission official voting results). The Secretary General of the United National Party nominated the Election Commissioner for that National List Member of Parliament long after announcing the election results. Accordingly, UNP leader Ranil Wickramasinghe, whose name was not mentioned in the national list of the United National Party and who contested the election from the Colombo district, was announced by the Election Commission through a special gazette on June 18, 2021, as the member of the national list of the United National Party.

On May 13, 2022, Ranil Wickramasinghe was appointed as the Prime Minister by the special gazette number 2279/23 for the post of Prime Minister, which was left vacant by the resignation of Mahinda Rajapaksa, who was then the Prime Minister.

Later, due to the resignation of President Gotabhaya Rajapaksa, Prime Minister Ranil Wickremesinghe became the temporary President in accordance with Article 40(1)(a) of the Constitution. Then from the votes of the Members of Parliament under Section 11 of the Election of the President (Special Provisions) Act No. 2 of 1981, he was elected as the succeeding President in terms of Article 40(1)(b) of Constitution (Exclusive Gazette No. 2289/39 of 21 July 2022).

According to Article 99A of the Constitution, a Fundamental Rights Petition was filed by Nagananda Kodituvakku, the Secretary General of the organization called the Transparent Foundation (Vinivida Padanama), alleging that Ranil Wickramasinghe's parliamentary membership should be revoked due to the failure of the Secretary General of the United National Party to nominate for the National List Member of Parliament within a week of the announcement of the Election Commissioner.

### **Fundamental Rights Petition**

This petition was filed on 16th June 2022. Ranil Wickramasinghe was the Prime Minister at that time. In addition to the parliamentary seat of Prime Minister Ranil Wickremesinghe himself, this petition also challenged the seat of MP Dhammika Perera, appointed from the national list of the Sri Lanka Podujana Peramuna Peramuna Party. The petition named 12 respondents. Accordingly, the Election Commission and its five members, the Secretary General of the United National Party, the Secretary General of the Sri Lanka Podujana Peramuna, Prime Minister Ranil Wickremesinghe, the Member of Parliament Dhammika Perera and the Attorney General were named as respondents.

The petition highlighted that Article 99A of the Constitution provides that “Where a recognized political party or independent group is entitled to a seat under the apportionment referred to above, the Commissioner of Elections shall, by a notice, require the secretary of such recognized political party or group leader of such independent group to nominate within one week of such notice, persons qualified to be elected as Members of Parliament (being persons whose names are included in the list submitted to the Commissioner of Elections under this Article or in any nomination paper submitted in respect of any electoral district by such party or group at that election) to fill such seats and shall declare elected as Members of Parliament, the persons so nominated”, but since the name of MP Ranil Wickramasinghe has not been received within a week of the announcement of the Election Commission, his membership should be revoked.

Also, the petition requested that the respondents, Ranil Wickramasinghe and Dhammika Perera, be issued an interim restraining order preventing them from sitting in Parliament or voting in Parliament until the hearing of the petition is completed, as they have not been appointed in accordance with Article 99A.

### **Supreme Court order**

The petitioner requested that this petition be heard before a full bench, and the Chief Justice rejected the request. Supreme Court Judges EAGR Amarasekara, AL Shiran Gunathilake and Janak de Silva did the consideration of the basic facts about the petition. The petitioners and respondents verified the facts regarding the petition on 18th July 2022, and the order of the Supreme Court was given on 19th July 2022.

Citing a quote from Chief Justice Samarakoon, in the case *Visuvalingam and Others v. Liyanage and Others (No. 1)* [(1983) 1 Sri L.R. 203 at 214-215], it was declared that the Supreme Court should examine the entire Act should be examined to understand what the true intention of the Legislature despite it, prima facie, seems an act that should be done by the term “Shall”.

According to Article 3 of the Constitution, voting is one of the forms of the sovereignty of the people. It was emphasized that since the United National Party won a National List Member of Parliament by direct vote of the people, the courts should choose an interpretation that protects and advances the franchise and the people's sovereignty rather than an interpretation that undermines it.

Also, according to Article 69 of the Constitution, the courts emphasized that even if there is a vacancy in the Parliament, it does not prevent the Parliament from carrying out its activities.

According to these facts, the Supreme Court decided that the period of one week indicated in Article 99A of the Constitution is a guideline and not a mandatory requirement, and accordingly, it was ordered that there is no basis for granting leave to proceed to hear this petition.

## Chapter Nine

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### **False election campaign**

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A candidate's image is vital in an election. During an election period, if a candidate's image is damaged by false propaganda, it is an injustice not only to that candidate but to the entire electorate. It will cause an obstacle to the candidate's victory in the election and the voters making their decision. This chapter describes the existing laws to prevent false propaganda that harms the image of the candidates, as well as several election petitions that challenged the appointment of the winning candidates on such occasions.

It should be noted here that the legal situation that is currently in effect in relation to some of the cases described in this chapter has not been used.

#### **9.1. Legal provisions regarding false propaganda regarding a candidate in an election**

The image of a candidate contesting an election is crucial for his/her victory. That is why election laws have prevented making false statements and propaganda regarding the character or behaviour of a candidate.

Section 81(1) (c) of the Parliamentary Elections Act No. 1 of 1981 provides that,

Every person who makes or publishes, before or during an election, to affect the result of that election, any false statement of fact in relation to the personal character or conduct of any candidate is committing the offence of "corruption".

Such person shall be liable to imprisonment for a term which may extend to 12 months and/or to a fine of five hundred rupees if convicted after a trial before a High Court. A person convicted of such an offence shall be

disqualified from voting or standing as a candidate for up to seven years from the date of conviction.

Provisions similar in all respects to this provision are contained in Section 81(c) of the Presidential Election Act No. 15 of 1981, Section 82(2)(c) of the Provincial Council Elections Act No. 2 of 1988 and Section 82(e)(1)(c) of the Local Authorities Elections Ordinance (Chapter 262).

Also, Section 91 of the Parliamentary Elections Act No. 1 of 1981 states that the election of a candidate as a Member is avoided by his conviction for any corrupt or illegal practice.

Also, section 91(2) of the said Act states that if it is proved in an election petition that “corruption or illegal act was committed by the candidate or by any representative of the candidate with his knowledge or consent” in an election petition, the membership can be abolished.

Similar provisions in all respects to this provision are contained in Section 91(c) of the Presidential Election Act No. 15 of 1981, Section 92(2)(a) of the Provincial Council Elections Act No. 2 of 1988 and Section 82(2)(a) of the Local Authorities Elections Ordinance (Chapter 262).

Thus, it is an offence to make false statements regarding the character or behaviour of a candidate in a presidential election, a parliamentary election, a provincial council poll or a local authority election, and the person who commits the offence will be disqualified from voting or appearing as a candidate for a vote for up to 7 years in addition to the penalty. Also, if it is proved that a representative of a candidate has committed a fraudulent act with the knowledge or consent of a candidate, in that case, the position of the relevant candidate (President/Member of Parliament/Provincial Council Member/Local Government Representative) will be revoked.

## **9.2. Effect of false statements by a supporter of a candidate**

*Don Philp v. T.B. Ilangaratne- 1951 NLR 561*

### **Background**

T. B. Ilangaratne (Independent) and Pred de Silva (United National Party), and D. B. Vadugopitiya (Independent) stood for the 1948 Kandy by-election (Alawattage. 2014, p73). TB Ilangaratne won the election competition. An election petition was filed alleging that the candidate Pred Silva's character and existence were prejudiced by the publication of false reports by TB Ilangaratne's supporters. The basis for this petition is the statutory provisions of the Ceylon (Parliamentary Elections) Order-in-Council, 1946.

### **Election petition**

Acting as supporters of T. B. Ilangaratne, about eight people have made false statements about Pred de Silva in public meetings and through newspapers, and those false statements are damaging to the character and behaviour of candidate Pred de Silva and, therefore, Petitioner requested to cancel this election. In particular, the petition contended that the respondent was no longer fit to act as a Member of Parliament in terms of Section 58(1) (c) and (d) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946.

### **Petition hearing**

The hearing of the petition was conducted by Judge Nagalingam. The petitioners had submitted to the court that some of the supporters of the respondents had made false statements damaging the character of the petitioner at several places in connection with the facts mentioned in the notebooks of the police officers. Accordingly, the

supporters of the respondents have made false statements damaging the character of the petitioner in 5 public meetings. Also, it was presented to the court as evidence that although the name of the press was mentioned in a pamphlet printed and distributed for the respondent's campaign, the name of the publisher was not mentioned.

### **The decision of the court**

Judge Nagalingam, who pronounced his judgment on 10th February 1949, declared five supporters of the respondent for breaching section 58(1)(c) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946 and 5 supporters of the respondent for contravening section 58(1)(d) of the said order. Four (04) people and a printing press manager are also guilty.

It was also stated that the respondent's appointment as a Member of Parliament would be revoked as he was disqualified under Section 58(2) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946.

### **9.3 Can unpublished official documents be used as evidence in an election petition?**

*Deniel Appuhamy v. Illangaratne -1966 NLR 97*

#### **Background**

In the parliamentary elections held in July 1960, candidates T. B. Illangaratne (SLFP) and Daniel Appuhami (UNP) contested (Election Results - Election Commission). T.B. Illangaratne won the election. The election was held under the Ceylon (Parliamentary Elections) Order-in-Council, 1946. Daniel Appuhami submitted an election petition to cancel TB Illangaratne's parliamentary seat in this election as the second and third respondents, who are the representatives of T.B. Illangaratne in this election, damaged Daniel Appuhami's

character and existence due to the false statements made in the election meetings.

### **Election Petition**

That the false statements made by the second and third respondents during the election campaign meetings in the Hewaheta Constituency during the parliamentary elections held in July 1960 caused damage to the character and existence of the petitioner, and therefore the act constituted a corrupt act under section 58 of the Ceylon (Parliamentary Elections) Order-in-Council, 1946 and thus filed an election petition under section 82(a) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, requesting that the first respondent's parliamentary seat be revoked and that the petitioner himself be duly elected as a candidate for Parliament as they have acted as agents of the first respondent.

### **Petition hearing**

The evidence submitted by the petitioner to prove the statements of the second and third respondents in the election petition hearing was a report prepared by an officer named Don Somapala, police constable 7357, who was attached to Talathuoya Police station.

This officer recorded summaries of the statements made by the second and third respondents at the election rallies held in support of the first respondent on the 3rd, 6th, 8th and 16th of July, 1960. Based on those summaries, he prepared reports to give to his superiors. The purpose of preparing those reports was to report to the higher officials about embarrassing statements to the government. The police employed him for that purpose. The OIC of Talathuoya Police Station and the Kandy Senior Superintendent of Police were also called to collect these reports. However, they informed the court that these reports are privileged documents under Section 123



of the Evidence Ordinance. Thus, the counsel for the respondents also objected to presenting these reports as evidence to the court. The Attorney General and the Inspector General of Police had also given arguments against the presentation of these documents.

### **Decision on the election petition**

The election judge did not allow these documents to be called as evidence and stated that since the documents are undisclosed official documents, they are protected by Section 123 of the Evidence Ordinance. Accordingly, the petition was dismissed.

(Section 123 of the Evidence Ordinance Act- No one shall be permitted to produce any unpublished official records relating to any affairs of State or to give any evidence derived therefrom, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit, subject, however, to the control of the Minister.)

### **Appeal to Supreme Court**

The petitioner was dissatisfied with the election judge's decision and appealed to the Supreme Court, stating that the election judge's decision not to allow the reports prepared by the police constable to be led as evidence was flawed.

### **Appellate hearing in the Supreme Court**

The appeal was heard by Chief Justice Basnayake, SPJ Weerasuriya and TS Fernando.

On February 17, 1964, the decision of the Court of Appeal was confirmed by the decision of Chief Justice Judge Basnayake, and on the same day, Judge Weerasuriya also gave a different decision and confirmed the decision of

the Returning Officer. However, in the judgment of Justice Fernando, it was stated that since the reports in question can be obtained as evidence, the election petition should be heard again.

### **The outcome of the Supreme Court decision**

According to the Supreme Court's decision, Ilangaratne lost his parliamentary seat, and Pred de Silva, who won second place in the election, was also found guilty. Accordingly, a by-election was held for the Kandy constituency in June 1949. TB Ilangaratne or Pred de Silva did not contest that by-election, and Tamara Kumari Ilangaratne (T.B. Ilangaratne's wife), C.L. Ratwatte, R.E. Jayathilaka and D.B. Vadugopitiya contested, and Tamara Kumari Ilangaratne won.

### **9.4. Who is the candidate's representative?**

*Wimalasara Banda v. Yalgama [1966] 69 N.L. R. 361.*

#### **Background**

For the parliamentary elections held in March 1965, the candidates of SB Yalgama (SLFP), Chandrasena Munaweera (Sri Lanka Freedom Socialist Party) and S.W. Alavathuala (Independent) contested for the Ratthota Constituency (Election Results - Election Commission). Among these, Chandrasena Munaweera represented the Ratthota Constituency until Parliament was dissolved in 1964, and he joined the opposition party from the ruling party when the Parliament was about to be dissolved. According to the election results, Yalgama won. An election petition was filed by Wimalasara Banda stating that Munaweera's character and existence were prejudiced due to the false statements made by a representative of Yalgama during the election campaign.

## **Election Petition**

Prejudicial to the character and existence of Munaweera due to the distribution of an election campaign pamphlet with a false statement during the election campaign, false statements about Munaweera by a representative of the respondent Yalegama in 5 meetings and false statements about Munaweera by the representatives of the respondent through loudspeakers in several election campaign vehicles. The Election Petition was filed seeking annulment of the appointment of the respondent, alleging that the said events took place on the knowledge and consent of the respondent.

## **Hearing of election petitions**

The alleged election campaign brochure was submitted as an attachment to the election petition, and among other things mentioned in it, it was mentioned that Munaweera took the bribe to vote against the government in 1964. However, during the hearing of the petition, it was revealed that the person who printed this paper had printed it on 14th December 1964. The nomination submission date for those elections was 14 January 1965. Accordingly, it was revealed during the hearing of the petition that the paper was printed one month before the submission of nominations. Also, member of the Sri Lanka Freedom Party's Nomination Board Member Ilangaratne has testified and stated that the person who printed the paper, named Dunuvira wanted to run for the Sri Lanka Freedom Party's Rattthota Constituency. He stated that he was a candidate and the respondent got the nomination, but he did not get the nomination and later, the said person declared that he would not support the respondent. Further evidence was given that in January 1965, he warned Dunuweera, and he agreed to assist the respondent.

Also, facts were presented in the petition that during a campaign rally of the respondent held at Udathenna on March 19, 1965, people named Dunuweera claimed that Munaweera had received a bribe of 75000 rupees to vote against the Prime Minister. This point was not challenged by the respondents, and their defence was that the chairman of the rally decides the person who speaks at an election rally, and the respondent has no knowledge or consent to his speech. Also, he cannot be considered an agent of the respondent.

The only evidence presented to the court regarding the statements made by the experts at the Udathenna meeting was a report apparently obtained in April 1965 from the Colombo Criminal Investigation Department. Sergeant Ratnayake of the Matale Police Station prepared this report. He had come to this meeting where he had written down parts of this speech in an exercise book and gone home and read those parts to his brother (who was not a police officer), and carbon copies of the report had been prepared in his handwriting. During the hearing of the petition, the officer stated that the relevant exercise book was left at the police station, and now it cannot be found.

### **Decision on the election petition**

Giving the decision of the election petition, the election judge had stated that the alleged pamphlet was printed by the person named Dunuvera in the hope of contesting the election and it was distributed before he supported the respondent and that the respondent did not have the knowledge and consent of the allegation regarding the pamphlet. Also, the testimony of the Criminal Investigation Department submitted as evidence regarding the Udathenna incident is covered under Section 35 of the Evidence Ordinance, so the evidence is not admissible. Accordingly, the petition was dismissed.

## **Appeal to Supreme Court**

Dissatisfied with the decision of the Election Judge, the petitioner appealed to the Supreme Court against the said decision. Chief Justice HNG Fernando, Supreme Court Justices TS Fernando and Shri Skandaraja heard the appeal. In this appeal hearing, does "representative of a candidate" include a speaker addressing an election rally? was analysed by drawing to the legal provisions with due reference to Sections 35 and 145 of the Evidence Ordinance regarding the use of "public books or reports or documents" as evidence, Section 56 of the Police Ordinance and Article 38(1) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946 regarding corruption and of Article 77(c) of the said Order-in-Council regarding election petitions.

## **The decision of the Supreme Court**

It was noteworthy that the three judges gave three decisions at the end of the petition hearing. Among those decisions, Justice TS Fernando agreed with the decision of Chief Justice HNG Fernando. Both these judgments affirmed the decision of the learned Election Judge and dismissed the appeal. Judge Sri Skandaraja, gave a decision contrary to the other judges and stated that the police constable's report should be accepted as evidence. Since the candidate has control over the speakers at the political rally, the speakers in this occasion meeting should be considered as the candidate's representative. Also, regardless of the date of printing of the alleged election campaign leaflet, it was distributed after he became a supporter of the respondent candidate so that it can be considered as an act of an agent according to the Ceylon (Parliamentary Elections) Order-in-Council. However, a majority decision dismissed the appeal on 20 December 1966.

**9.5. The candidate is responsible for the statements made by the representatives in front of the candidate.**

*Samaranayake v. Kariawasam (69 N.L.R.1)*

**Background**

RG Samaranayake (United National Party), Albert Kariyawasam (Sri Lanka Freedom Party) and JG Gajanayake (Mahajana Eksath Front) contested for the Bentara-Alpitiya constituency for the parliamentary general election held in March 1965. (Election Results - Election Commission). According to the election results, Samaranayake won the election competition. Kariyawasam filed an election petition demanding the annulment of Samaranayake's membership, alleging that his character and existence were affected by making false statements by Samaranayake's representatives during his election campaign.

**Election Petition**

In this election petition, in which the winning candidate Samaranayake was named as the respondent, the petitioner Kariyawasam stated that a supporter of the respondent had made false statements in several election meetings which were harmful to his character and existence, thereby infringing 58(1)(d) of the Ceylon (Parliamentary Elections) Order-in-Council 1946 that an offence has been committed under Section 77(c) of the above Ceylon (Parliamentary Elections) Order-in-Council, 1946 as they have acted as agents of the Respondent and have done these acts on the knowledge and consent of the Respondent, and that the Respondent's parliamentary seat be revoked.

### **Hearing of election petitions**

During the hearing of this petition, a person named Karunaratne and a woman named Vithanachchi presented evidence that statements made by the petitioner Kariyawasam in several election meetings had made statements harmful to the character and existence of the petitioner. Evidence had been presented that the woman named Withanachi had stated in several meetings that petitioner Kariyawasam had taken a bribe of 300 rupees from her by promising to provide employment. Evidence was presented that these statements were made in a meeting held in Balagala on February 25, 1965, in a meeting held in Tanabeddegama on February 27, in a meeting held in Bodhiwela on March 5, and in a meeting held in Kahambiliakanda on March 20. Evidence was also presented that these stories of hers were heard by the respondent. Also, there was no evidence that the respondent tried to stop those stories.

### **Decision on the election petition**

At the end of the election petition hearing, it was decided that the character and existence of the petitioner were harmed by the false statements made by the persons who acted as the respondents' representatives according to the submissions of the petitioners, with the knowledge and approval of the respondent, and it was decided to abolish the parliamentary seat of the respondent.

### **Appeal to Supreme Court**

Dissatisfied with the decision of the Election Judge, the respondent appealed to the Supreme Court against the said decision. The appeal was heard by Chief Justice Sansoni and Supreme Court Justices HNG Fernando and T.S. Fernando.

Here, the judge used the following excerpt from the case of *Wakefield Case 2 (O M. A H. at p. 100* to interpret the candidate's representative.

Accordingly, “the term ‘agency’ in matters relating to elections has been given a wide-ranging definition and generally an election candidate is liable to those persons who, to the best of his knowledge, engage in acts conducive to the promotion of his election campaign in such elections and only in cases where the said candidate or his authorized representatives have reasonable knowledge/understanding that the campaign is being carried out with a view to promoting an election campaign purpose.”

Especially after the first speech of Vithanachchi, the appellant-respondent invited her to several more meetings. Accordingly, in concurrence with Chief Justice Sansoni and Justice T.S. Fernando on August 1, 1966, Judge HNG Fernando delivered the decision of the appeal petition. Thus the appeal petition was dismissed, confirming the decision of the election judge.

### **Impact of the judgment**

By this judgment, the appointment of RG Samaranayake (United National Party), who was elected to the Bentara-Alpitiya constituency, was cancelled. Accordingly, a by-election was held on October 24, 1966, for the Bentara-Alpitiya constituency. Albert Kariyawasam (SLFP) won the election.



## **9.6. A witness can use a police report to refresh their memory**

*Willian Silva v. Wickramasuriya -69 NLR 409*

### **Background**

GH William de Silva (SLFP), P.P. Wickramasuriya (SLFSP), E. K. Cyril (LDP), Charles Abeyesundara (Independent) and T.N. Bamunusinghe (Independent) contested for the Devinuwara Constituency for the parliamentary elections held in March 1965. Election Results- Election Commission). According to the election results, William de Silva won. Wickramasuriya submitted an election petition stating that Wickramasuriya's character and existence were affected by the false statements made by William Silva's representatives during his election campaign.

### **Election Petition**

A petition was filed with the Electoral Judge seeking to annul the appointment of William de Silva as a Member of Parliament on the basis that one of William Silva's supporters, Ven. Yasassi Thero, made a false statement which had an effect on Wickramasuriya's character and existence during the election campaign and as he had committed an offence under Section 82(a) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946.

### **Election Petition**

The primary point raised in the election petition was that Wickramasuriya, the petitioner, worked as a Member of Parliament until the dissolution of Parliament on 18 December 1964. He represented the ruling party as a Sri Lankan Freedom Party member in the Devinuwara Constituency. On December 3, 1964, he resigned from the government. Parliament was dissolved on 18 December 1964.

For the 1965 parliamentary elections, he appeared as a candidate of a new party, the Sri Lanka Freedom Socialist Party.

On March 18, 1965, during an election meeting of William Silva, one of his supporters, a monk named Yasassi, stated that he had received five thousand rupees as a bribe from a newspaper agency to vote against the Wickramasuriya government. Also, it was noted in the petition hearing that a proposal to make Buddhism the state religion had been submitted to the Parliament, and the petitioner had received 50000 rupees as a bribe from a newspaper agency to vote against the proposal and to break the government. This statement was recorded by Police Constable Hendrick, who covered the meeting. At the police station, police constable Gunasena typed his notes, made four (4) identical copies, and gave them to the police inspector. He forwarded the copies to the Criminal Investigation Department. Hendrick and the police inspector had given evidence at the election petition hearing. Cross-examination was also done.

Accordingly, the election judge declared that the petitioner's character and existence were harmed by those statements and revoked the respondent's parliamentary seat.

### **Appeal to the Supreme Court**

Dissatisfied with the election judge's decision, William da Silva appealed to the Supreme Court against the decision. The basis of the appeal was that the Election Judge had accepted the official police reports without proving them, and that was a violation of the provisions of the Evidence Ordinance.

## **The decision of the Supreme Court**

The appeal was heard by Chief Justice HNG Fernando and Justices Abhayawardena and Sri Skandaraja. On January 16, 1967, the Chief Justice, with the concurrence of the other judges, announced the decisions in the appeal.

The judge stated that according to Section 35 of the Evidence Ordinance, a police officer's report could not be used to prove any fact. Still, as per Section 159 of the Evidence Ordinance, the report can be used to refresh the memory, so the police officer's giving evidence and cross-examination in this election petition. The Chief Justice declared that the decision made by the Election Judge was correct on the basis of the questions, and the appeal petition was dismissed by his decision.

### **9.7. A newsletter shall not be deemed to be an agent of a candidate**

*Jayasena v. T.B. Ilangaratne- 1973 NLR 35*

#### **Background**

For the Kolonna by-election held on February 28, 1967, the candidates TB Ilangaratne (Sri Lanka Freedom Party), Kusuma Gunawardena (Mahajana Eksath Peramua), and Thilakavathy Samarasinghe (Independent) competed (Alawattage. 2014, p210) contested and Ilangaratne won according to the election results. After the victory, the petitioner filed an election petition challenging his appointment. In that petition, allegations of bribery, undue influence and publication of false statements were directed against the respondent. The election judge who heard the petition rejected the election petition.

## **Appeal to Supreme Court**

Dissatisfied with the decision of the election judge, the petitioner appealed to the Supreme Court against the decision. The main legal argument of the appeal was that the election judge had failed to identify the newspaper as an agent of the respondent even though several false statements published in the newspaper had been submitted at the time of the election petition.

## **Supreme Court Appellate Hearing**

The appeal was heard by the Supreme Court Justices Sirimanna, Weeramantri and Vijayathilaka, in which the Supreme Court emphasized several news items that were mentioned in the Eththa newspaper and brought to the attention of the election judge in the election petition.

## **Supreme Court decision**

The Supreme Court decision was announced on August 7, 1969, by Justice Sirimanna with the concurrence of other judges.

The judge stated that an author, a printer and a publisher produce the Eththa newspaper. The judge stated in his decision that although the newspapers published statements supporting each candidate during an election, they could not be considered representatives of the candidates.

The judge said that a newspaper was considered as an agent of a candidate in the decision of the cases of *Gandasing v. Rai* (Doabia's Indian Election Cases, 1935 to 1950, Volume 2, page 94), where a candidate bought twenty thousand copies of the news published in that newspaper. The judge stated that newspapers had been distributed among their voters, and no newspaper had

been accepted as a representative of a candidate in any other case.

Another point raised here is that one of the main speakers of the respondent acts as a consultant editor of the Eththa newspaper

Justice Sirimanna quoted the statement of Justice Lush in the case of Henricks (3 O'M. & B.p .69, which states that "the relation between a principal and a person of whom he is his agent is more. It is closer than that between an ordinary principal and an agent. The analogy is that of a sheriff and his under-sheriffs and bailiffs, for the candidate is responsible for all the misdeeds of his agent done within the scope of his authority, whether they are done contrary to his express directions or even in disregard of them, as regards the seat. "

Accordingly, the Supreme Court dismissed the appeal petition, saying that even if the newspaper's author is a supporter of the candidate, a newspaper cannot be considered an agent of the candidate.

### **9.8. The agency of the agent who made the false statement must be proved**

*Muththettuwegama v. Pilapitiya-(1980) 2 Sri LR. 248*

#### **Background**

In the parliamentary election held on July 21, 1977, Abeyratne Pilapitiya (UNP), Sarathchandra Muththettuwegama (CP), S.S. Gautamadasa (SLFP) and H.R.S.D. Zoysa candidates contested (Election Results - Election Commission). Abeyratne Pilapitiya was elected to the Parliament by getting 1662 votes more than Sarath Muththettuvegam in the election. In this election, an election petition was to revoke Pilapitiya's parliamentary seat on the basis of false statements made by an agent of

Pilapitiya which were harmful to Sarath's personal character and existence Muttettuwegama.

### **Election Petition**

The first respondent in this petition was Pilapitiya, who was the winning candidate. The second respondent election campaign supporters of the first respondent. This petition stated that two newspapers named **Jana Aviya** and **Kalawana Janatha** were distributed in the Kalawana Constituency during the election period. The petitioner's character and existence were prejudiced by the false statements published by those newspapers. Accordingly, the relevant false statements in the said newspapers were prepared by the third respondent while the second respondent was the publisher, and as these activities were carried out with the first respondent's knowledge by his agents, the petition claimed that the election should be annulled as per the provisions of Section 58(a) of the Ceylon (Parliamentary Elections) Order-in-Council, to be read with Section 77(c) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946.

### **Petition hearing**

The election petition was heard from 27th to 30th November 1979 and on 13th, 14th and 17th December 1979 before Justice Abdul Kader of the Court of Appeal. Both publications, named **Jana Aviya** and **Kalawana Janatha** were published without any reference to an author. The declaration **Jana Aviya** was mentioned in the election expenditure declaration of the first respondent. Also, during the hearing of the petition, facts were presented that the publication **Kalawana Janatha** had been distributed on July 20, 1977, during the election campaign rally of the first respondent, when passing by the offices of the petitioner. However, there was no

evidence that the first respondent wrote these articles or saw the same. Evidence was presented that the second respondent was responsible for printing and publishing these publications. It was submitted that the second respondent is the organization secretary of the first respondent, and he has conducted election operations while staying at the house of the first respondent.

### **The Decision**

The decision of the election petition was given on January 28, 1980, by Justice Abdul Kader. There, it was decided that the second respondent had committed a corrupt act under Section 58(a) of the Ceylon (Parliamentary Elections) Order-in-Council 1946. Also, the judgment had stated that there was no presentation of facts in the court and that the facts mentioned in the statements submitted by the petitioner were not made on the respondent's own accord and consent. However, when a representative is found guilty, the corrupt practice affects the candidate regardless of the candidate's consent, and the Judge accordingly decided that the first respondent's parliamentary seat will be revoked.

### **The outcome of the Supreme Court decision**

Abeyratne Pilapitiya's parliamentary seat was annulled according to the Supreme Court decision. As a result, it was decided to hold a by-election for the Kalawana constituency. Accordingly, for this by-election held in January 1981, Sarath Muttettuwegama contested from the Communist Party and six other candidates contested independently. Sarath Muttettuwegama won the by-elections and was re-elected to Parliament.

### **9.9. False electioneering by an agent of the candidate is grounds for loss of seat.**

*Kularatne and Others v. Rajapaksha- 1985-1-Sri.LR-24*

## **Background**

The by-election for Mulkirigala Constituency was held on May 14, 1983. Ananda Kularatne (United National Party), Nirupama Rajapaksa (Sri Lanka Freedom Party), Francisco Wimalasena (Independent) and Ranjith Sumanasena (Independent) contested this by-election (Alawattage. 2014, 286). According to the election results, Ananda Kularatne won. During the election campaign period, at an election campaign meeting held in Middeniya, an election petition was submitted challenging Kularatne's candidacy on the basis of making a false statement that harmed the character and existence of Nirupama Rajapaksa, a representative of Kularatne. The petition named the winning candidate as the first respondent and Basil Rajapaksa as the second respondent, alleging that he had made false statements while acting as an agent of the first respondent. The Election Judge who heard the petition ruled that the statements of the second respondent were found to be false during the hearing of the petition and that the said statements affected the character and existence of the petitioner Nirupama Rajapaksa. Therefore an offence under Section 58(1) (c) of the Ceylon (Parliamentary Elections) Order-in-Council 1946 and thus, according to section 82(a)(1) of the said Order-in-Council, the parliamentary seat of the respondent Kularatne was annulled.

## **Appeal to Supreme Court**

Against this decision, two appeals were submitted to the Supreme Court by the first respondent Kularatne (SC Appeal No. 1/84), and the second respondent (SC Appeal No. 2/84) and both appeals were heard together.

### **Appeal hearing**

The appeal was heard from 19 to 21 and 24 to 26 September 1984 before Chief Justice Sharwananda,



Vanasundara and Abdul Kader, and the petitioner was a daughter of the late George Rajapaksa. George Rajapaksa represented the Mulkirigala constituency from 1960 to 1976. A campaign poster of the petitioner was to vote for the deceased George Rajapaksa for good treatment; it was noted in this appeal hearing that the second respondent stated that the petitioner had no love for the deceased George Rajapaksa and closed the door when he went to see her when he went to England for his heart operation. Also, a recorded tape of the speech of the second respondent made during the election campaign was presented during the hearing and evidence was also given. The second defendant did not challenge that statement on appeal.

### **Supreme Court decision**

On December 12, 1984, Chief Justice Sharwananda, with the other judges' concurrence, announced the Supreme Court's decision. The judge stated that the petitioner had proved that the second respondent made a statement as noted in the election petition and that it was false. It was also stated that the election judge had identified the second respondent as an agent of the first respondent.

Also, in accordance with Section 82(1) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, it was stated that " This Court cannot review the findings of fact by a trial Judge unless a question of law is involved in the finding or the finding itself, is in a legal sense a question of law" and this appeal is thus dismissed. According to the decision of the election petition, Kularatne lost his parliamentary seat. "

### **Results of the Supreme Court decision**

According to the decision of the Supreme Court, Ananda Kularatne's parliamentary seat was abolished.

Consequently, another by-election was held for the Mulkirigala constituency. The process involved is described next.

**9.10. An act of corruption by an agent does not disqualify a candidate from voting.**

*Kularatne v. Chandrananda de Silva (1985) 2 Sri.L.R 164)*

**Background**

According to the decision of the Supreme Court in the case of Kularatne and others v. Rajapaksa (Kularatne v. Rajapaksha- 1985-1-Sri.LR-24), the parliamentary seat of Ananda Kularatne was abolished. The Election Judge published the report in an extraordinary gazette on 1st January 1985 under section 82 of the Ceylon (Parliamentary Elections) Order-in-Council, 1946. It was mentioned in the announcement that;

“Pursuant to Section 82 of the Ceylon (Parliamentary Elections) Order-in-Council of and according to my findings in accordance with the facts of the relevant election petition, the 2nd respondent in the said election petition, Mr Basil Rajapaksa of Weerakatiya Medamulana, has falsely affected the personal character and conduct of the petitioner Nirupama Rajapaksa who was a candidate in the same election. It is hereby reported that it has been proved that a corrupt act of publishing a statement has been committed and that with the knowledge and consent of the 1st respondent in the said petition Mr Ananda Kularatne, acted as his agent for the purpose of influencing the appointment of the said candidate in the said election.”

According to this announcement, the names of Ananda Kularatne and Basil Rajapaksa should be deleted from the electoral registry in accordance with Section 82(d)(2)(b)(ii) of the Ceylon (Parliamentary Elections) Order-in-Council 1946, to be read with Section 82(d).

Ananda Kularatne filed a writ petition in the Court of Appeal alleging that constitutional rights and civil rights are being violated by removing his name from the electoral roll, including the right to vote.

### **Writ Petition**

Petition Writ Appeal No. 112/85 registered under (CA. APPLICATION No. 112 /85) by Ananda Kularatne named the Election Commissioner and the Returning Officer of Hambantota as respondents in this writ petition. Ananda Kularatne requested the following reliefs through the writ petition which was registered in the Court of Appeal.

- a) - to issue a writ of certiorari setting aside the decision to strike off his name from the electoral registry,
- b) - To issue a writ of mandamus to re-enter his name in the electoral registry.

While this writ petition is pending, Ananda Kularatne made a reference to the Supreme Court to get an interpretation regarding Article 89(e)(iii) of the Constitution.

### **Reference to the Supreme Court**

This referral was registered as Supreme Court Reference No. 1/85 (S.C. REF. 1 /85), and through this referral, the following clarifications were requested from the Supreme Court.

- (a) such candidate being a person ineligible to be a voter or a Member of Parliament in a parliamentary election as referred to in clause 82 d (2) (b) (ii) of the Order-in-Council and when considered in accordance with Articles 88, 89 (e) (iii) and 90 of the Constitution; whether section 82 d (b) (ii) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946 read with the existing Fifth Amendment to the Constitution.

(b) in a case where the corrupt act of making a false statement under section 58 (1) (c) of the Ceylon (Parliamentary Elections) Order-in-Council 1946 is established by the report of an election judge, if an agent of such candidate has committed such act with the knowledge and consent, then whether such candidate is subject to the disqualification contained in Article 89 (e) (iii) of the Constitution.

(c) In Article 89 (e) (iii) of the Constitution, whether the words "..... a report made by a Judge of conviction of any corrupt practice..... " (as provided in section 82 (b) of the said Order-in-Council) applies only to a person who is found in such report to have committed such corrupt act and (in such report to have been found guilty of such corrupt act whether or not specified), even in a case where it is stated in such record that the agent concerned has done such act with the knowledge and consent of such candidate, shall apply"

### **Supreme Court Interpretation**

The reference petition was heard by Chief Justice Sharwananda, Supreme Court Justices Kolinthome and Athukorala, with the concurrence of the other judges. Justice Sharwananda gave the decision on 2nd July 1985 with answers mentioned below.

(a) No

(b) No

(c) In Article 89 (e) (iii) of the Constitution, the words "..... a report made by a Judge of conviction of any corrupt practice..... " (above as provided in section 82 (b) of the said Rajya Sabha Ordinance Order-in-Council) shall apply only to a person who is shown in such report to have committed and been found guilty of such corrupt act., shall not apply even if it is stated in such report that the agent concerned has done such act with the knowledge and consent of such candidate".

The Chief Justice also clarified that Article 89(e)(iii) of the Constitution should be read alone in determining disqualification to be an elector. Accordingly, the Supreme Court decided that the petitioner is not an ineligible person to be an elector under Articles 88 and 89 of the Constitution.

### **The outcome of the Supreme Court decision**

Due to the abolition of Ananda Kularatne's parliamentary seat, another by-election was held for the Mulkirigala constituency. As Ananda Kularatne was qualified to contest the election by the Supreme Court decision mentioned above, he contested for the United National Party in the by-election. The by-election was held in September 1985, and for that, the candidates of Chamal Rajapaksa, along with Ananda Kularatne represented political parties (SLFP), and six other candidates contested from independent groups and Ananda Kularatne won again and was appointed to the Parliament.

## Chapter Ten

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### **Election campaigns and religious activities**

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Religion and politics are prejudiced by connecting religious affairs, which is a spiritual process, with elections, which is a political process. Also, when using the vote, which is a political decision, if the voter is influenced by his religious organization by taking that decision, the voter becomes helpless in such a case. Religious institutions and places of worship are kept out of the electoral process in the hope of using the voter's will without influencing it. This chapter describes the legal provisions regarding restrictions on the use of religious ceremonies and places of worship in election campaigns and the court rulings that defined religious ceremonies in election petitions.

#### **10.1 Legal situation regarding religious activities in an election campaign**

The current law prohibits the use of religious shrines and religious ceremonies to gain an advantage for a certain political party or candidate during the election campaign. Section 79 (2) of the Parliamentary Elections Act No. 1 of 1981 states,

“Every person who, at any time during the period commencing from the first day of the nomination period at any election and ending on the day following the date of the poll at such election,

(a) utters at any religious assembly any words for the purpose of influencing the result of such election or inducing any elector to vote or refrain from voting for any recognized political party or independent group at such election, or

(b) for such purpose distributes or displays at any religious assembly, any handbill, placard, poster,

drawing, notice, photograph of a candidate, symbol, sign, flag or banner; or

(c) holds or causes to be held a public meeting at a place of worship for the purpose of promoting the election or the election campaign of any recognized political party or independent group at such election, shall be guilty of the offence of undue influence.

(3) Any member or official of a religious order or organization in order to induce or compel such member or adherent to vote or refrain from voting for any recognized political party or independent group at an election, or to support or refrain from supporting any political party or independent group at such election, or on account of such member or adherent having voted or refrained from voting for a recognized political party or independent group at such election, or having supported or refrained from supporting any such recognized political party or independent group at such election, shall be guilty of the offence of undue influence.

(a) who denies, or threatens to deny, to any member or adherent of that order or organization, or to any member of the family of such member or adherent, any spiritual ministrations, service or benefit, to which such member or adherent would in the ordinary course have been entitled; or

(b) excludes, or threatens to exclude, such member or adherent from such order or organization, shall be guilty of the offence of undue influence.

A person convicted of this offence can be sentenced to rigorous imprisonment for up to 12 months or and in addition, will not be eligible to vote and to stand for election for a period of up to 7 years from the date of conviction. Also, if a Member of Parliament was holding a seat at the time of conviction, the seat would be revoked.

Provisions similar in all respects to this provision are contained in Sections 78 (2) and 78(3) of the Presidential Elections Act No. 15 of 1981, Sections 80(2) and 80(3) of the Provincial Council Elections Act No. 2 of 1988 and also found in Sections 82(c)(2) and 82(c)(3) of the Local Authorities Elections Ordinance (Chapter 262). Also, if it is proved to the satisfaction of the election judge in an election petition that the candidate or with his knowledge by his agent has committed an election corruption offence, it is stated in section 92 (2) of the Parliamentary Elections Act that the candidate's membership can be revoked.

## **10.2 What is a religious meeting?**

### ***Hemadasa v. Sirisena 69 NLR 201***

#### **Background**

For the 1965 parliamentary election, JL Sirisena (UNP), LB Jayasena (SLFP), Rankodi Wickramaratne (SLFSP) and M. A. M. G. Appuhami (MEP) candidates contested for Bingiriya constituency (Alawattage. 2014, p200). Sirisena, who contested from the United National Party, won. This election was conducted under the Ceylon (Parliamentary Elections) Order-in-Council 1946 as amended by Act No. 10 of 1964, and Section 56(2)(a) of this Act states:

“During the period from the date of submission of nomination papers to the date of the end of voting, in any religious gathering with the intention of influencing the voting result of such an election or making a statement that induces a voter to vote or not to vote for any candidate commits the offence of undue influence.”

The petitioner alleged that the supporters of the respondent solicited votes for the respondent at religious gatherings during the election campaign.



## **Election Petition**

The supporters of the respondent, a monk named Sasanarathana and a doctor named Karunaratne and a person named Karunasena, during religious meetings held in several temples and a meditation centre, asked the people who participated in the meeting to vote for the respondent's election symbol, i.e. the elephant symbol and that action constitutes the corrupt act of undue influence is a compoundable offence as per the provisions of Article 56(2) (a) of the Ceylon (Parliamentary Elections) Order-in-Council as amended by Act No. 10 of 1964. Therefore, the petition was filed requesting that the respondent's parliamentary seat be revoked.

## **Election petition hearing**

The following facts were revealed during the election petition hearing;

- ❖ That a monk named Sasanatissa of Duannapola temple had asked people to give votes to the respondent during the foundation stone laying ceremony for the dwelling house of Paranagama temple in Udubaddawa.
- ❖ A doctor named Karunaratne, who came to meet the pilgrims staying at Dummalasuriya meditation centre after the meditation programs of that meditation centre, had asked those pilgrims to vote for the sign of the elephant.
- ❖ Also, a person named Bandarappu, who came to the meditation centre between 11.00 am and 2.30 pm, which was the break time of the meditation program, distributed the respondent's pamphlets among the pilgrims.

- ❖ A person named Karunasena came to a meditation centre in Bowatta on some nights and, during the breaks of the meditation program, asked the pilgrims to use their votes to liberate the country from the Marxists.
- ❖ Between the school hall of the Munnakulama temple and Language, a film about places of historical and religious importance in India and Sri Lanka was shown, and at the end of the film, a monk named Sasanatissa asked the assembled people to vote for the elephant and send the respondent to Parliament.

### **Decision on the election petition**

The Election Judge who heard the election petition decided that only religious gatherings are covered by Section 56(2)(a) of the Act. A foundation stone ceremony for a dwelling house is not a Buddhist religious ceremony. Also, the election judge decided that since the supporters of the respondent requested to vote at Dummalasuriya and Bowatta meditation centres after the meditation programs were over and during rest periods, those occasions also cannot be interpreted as religious gatherings. Also, the judge dismissed the petition stating that the film exhibition at the Munnakulama temple was not a religious gathering, and there was no evidence that religious activities took place at that place.

### **Appeal to Supreme Court**

Dissatisfied with the decision of the election judge, the petitioner appealed to the Supreme Court against the decision.

## **Appeal hearing**

Supreme Court Justices HNG Fernando, SPJ Thambaiiah and Abhayasundara heard the appeal. On September 22, 1966, Justice Abhyasundara, with the concurrence of the other two judges, announced the decision of the appeal hearing. The judgment affirmed the election judge's decision and dismissed the appeal.

### **10.3. Holding meetings in an abandoned religious place is not an election offence.**

*Disanayake v. Abeysinghe (1971) 75 NLR 12*

#### **Background**

For the parliamentary elections held on May 27, 1970, Gamini Dissanayake (UNP), T. William Fernando (SLFP) and C.V. Velupillai (Independent) stood for the Nuwara Eliya constituency. According to the election results, Gamini Dissanayake won and was elected as a Member of Parliament. The petitioner filed an election petition and requested the court to revoke Gamini Dissanayake's MP, alleging that he or his agents exerted undue influence during his election campaign.

#### **Election Petition**

This election petition was filed under sections 80 (b) and (d) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946. In this petition, Gamini Dissanayake was named as the first respondent and one of his assistants as the second respondent. The petition raised three primary allegations. That is.

- ❖ Committing an offence under section 56(2) (c) of the Ceylon (Parliamentary Elections) Order-in-Council 1946 by holding, with the knowledge or consent of the first respondent, a political meeting

in promotion of the first respondent at a Hindu temple in Nuwara Eliya Scrub Estate, a place of worship.

- ❖ Offence under section 56(2) (c) of the Ceylon (Parliamentary Elections) Order-in-Council 1946 by holding, with the knowledge or consent of the first respondent, a political meeting for the promotion of the first respondent at Mari Amma Hindu Temple, a place of worship, Nuwara Eliya, Hawa Eliya, on 16 May 1970.
- ❖ On the evening of 24th May 1970, at a political meeting held at the Golf Links Grounds, Old Market, Nuwara Eliya, the 4th respondent, acting as an agent of the 1st respondent, made false statements injurious to the personal character of the candidate of the Sri Lanka Freedom Party, William Fernando, making a false statement which is an act of corruption under section 58 (1)(d) of Ceylon (Parliamentary Elections) Order-in-Council 1946.

### **Hearing of election petitions**

At the beginning of the hearing of the petition, the respondents raised a preliminary objection before the election judge, stating that the petition and the affidavit were not submitted in accordance with Section 58(1)(d) of the Ceylon (Parliamentary Elections) Order-in-Council 1946 and that the security was insufficient and thus the petition be dismissed without hearing. Also, the respondents further argued that the Mari Amma temple mentioned in the petition was an abandoned place at the time of the meeting. Evidence was also presented that no such meeting was held in the temple at Scrub Garden. Accordingly, that charge was dismissed by the election judge. However, the election judge cancelled the parliamentary appointment of the first respondent,

Gamini Dissanayake, by accepting the allegation regarding the statements made by the 4th respondent, which are damaging to his personal character in relation to receiving the vote of the Sri Lanka Freedom Party candidate William Fernando.

Rejecting the initial objection, the election judge heard the petition and revoked the Parliamentary seat of the 1st respondent, Gamini Dissanayake.

### **Appeal to Supreme Court**

Dissatisfied with the decision of the election judge, the 1st respondent Gamini Dissanayake appealed to the Supreme Court against the said decision. This appeal was based on two legal arguments. The first contention was that the election petition was not filed in accordance with Section 80(b) and (d) of the Order-in-Council. The second argument was that the bail amount submitted for the election petition was not sufficient as per Rule 12 of Election Petitions.

### **Supreme Court decision**

The appeal was heard by Supreme Court Justices GPA Silva, Sirimanna and Samarawickrama. The judgment of the appeal hearing was announced on 21 December 1971. A unique feature of this judgment is that all three judges announced three judgments. Judge Silva's decision stated that accepting the legal issues raised in the appeal, the decision of the election judge should be annulled, and Gamini Dissanayake should be declared as the duly elected Member of Parliament for the Nuwara Eliya constituency. However, in both the judgments announced by Judges Sirimanna and Samarawickrama, it was decided that the appeal petition should be dismissed.

### **Effect of Supreme Court decision**

According to this decision, the parliamentary seat of Gamini Dissanayake, who won the 1970 parliamentary election, was abolished, and a by-election was held on October 9, 1972, for the Nuwara Eliya constituency. For this election, Gamini Dissanayake (UNP), H.M. Abeysinghe (SLFP), Madawala Bandara Weerakone (MEP), Don. Seneviratne (Independent), Abhiman.P. Candidates Murugayya (Independent) contested, and Gamini Dissanayake won with a majority of 1871 votes. (Election Results-Election Commission)



## Chapter Eleven

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### **Annulment of elections based on violence**

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One of the critical aspects of making an election successful is the ability to conduct it without violence. Voters need a peaceful environment to make decisions freely as well as to visit the polling stations and cast their votes. Also, every candidate needs a peaceful environment to take their policies and criticisms to their voters through their election campaigns. That is why it is claimed that the result of an election held in a violent atmosphere does not reflect the true will of the voters. This chapter describes the existing legal provisions regarding election results and annulment of seats due to election violence and the judgments challenged in election petitions.

It should also be noted that the legal situations related to some of the judgments described in this chapter have been revised.

#### **11.1. Legal provisions on election violence**

Election-related violence and intimidation are serious obstacles to free and fair elections. Therefore, Section 92 of the Parliamentary Elections Act No. 1 of 1981 states that if it is proved in an election petition that voters have been prevented from voting for a particular party due to acts of violence associated with an election, the said elections shall be annulled.

“Section 92 (1) The election in respect of any electoral district shall be declared to be 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 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 for the recognized political party or group which it preferred and there- the result of the election.

Provisions similar in all respects to this provision are found in Section 91 of the Presidential Elections Act No. 15 of 1981, Section 92 of the Provincial Council Elections Act No. 2 of 1988 and Section 82 of the Local Authorities Elections Ordinance (Chapter 262).

**11.2. A reasonable showing of the effect caused by general intimidation is sufficient to invalidate the vote**

*Pelpola v. Gunawardene (1948) 49 NLR 407*

**Background**

For the parliamentary election held on 18 September 1947, Ratnakeerthi Senarath Serasinghe Gunawardena (UNP) and Stanley Pelpola (Independent) contested for the Gampola constituency. According to the results of the polls, Gunawardana won. Accordingly, Gunawardana became Chief Government Whip and the Minister without a role. Gunawardana received 387 majority votes. Pelpola filed an election petition demanding the annulment of Gunawardana's parliamentary seat, alleging that his vote count was reduced due to violence and undue influence in the election.

**Election Petition**

The petition named the winning candidate Gunawardana as the respondent. The election petition presented by Pelpola was based on two main points. The first point was the intimidation and driving away of voters at the Udawela polling station and several other

polling stations. He claimed in the petition that the majority of the voters did not get a chance to vote due to these actions. The second point was that the agents of the respondent exerted this undue influence. It was related to the first point. On these grounds, the election petition sought the annulment of the respondent's membership of Parliament in terms of Section 77(a) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946. It was also requested that an order be made that the respondent should be subjected to a civic disability under Section 58(2) of the Ceylon (Parliamentary Elections) Order-in-Council 1946 due to the commission of these wrongdoings by the representatives of the respondents.

### **Petition hearing**

The election petition was heard by Justice Windham. The Presiding Officer of the Udawela polling station, who gave evidence at the hearing of the petition, stated before the court that there were 1427 registered votes in the polling station, and only 541 votes were used on the polling day. Thus only 147 votes were used from 10.00 am to 4.00 pm, and the remaining 168 votes were used from 4.00 to 5.00 pm. This testimony matched well with the testimony of S. Paramanathan, a voter at the Udawela polling station and chairman of the Labor Committee of the Ceylon Indian Labor Congress at the nearby Moswilla estate. He stated that he went to the Udawela polling station with a group of other plantation workers to vote, and a group of Sinhalese villagers who were staying near the bakery near the polling station asked where he was going, and when he said that he was going to vote, they had been told that the Tamil people did not have the right to vote and further it was stated that his boss had instructed him to attack if he tried to cast a vote. Because of that, the group, including him, went back, fearing that an attack would happen, and he said that he informed the chairman of the district committee of the Ceylon Indian Labor Congress about this incident through a telephonic message. As a result, at around 4.30

pm, a group of police officers advised them to vote, but Paramanandan added that many people expressed their reluctance to vote due to fear. He also said that a group of people who were near the bakery near the polling station threw stones at the people who went to vote. Paramanathan said that because he decided to support the petitioner Pelpola in this election, many workers in this village and adjacent estates chose to vote for Pelpola.

These facts regarding general intimidation were not challenged by the respondent during the hearing of the petition. The position of the respondent was that he came to know about these facts during the night of the polling day and that he had nothing to do with these events. Mr. Grayson, accused by the petitioner of inciting intimidation and voter suppression, stated that the petitioners had not presented sufficient evidence to prove the alleged wrongdoing.

### **Decision on the election petition**

Judge Windham, who heard the election petition, announced his decision on March 12, 1948.

In his ruling, the judge stated that taking into account the majority obtained, and the strength of the poll, it is sufficient for the petitioner to show reasonably that the result was influenced to prove general intimidation.

Accordingly, as per Section 77(a) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, it has been proved that the result of the election has been influenced by general intimidation. In the second allegation of the petitioner, the judge said there was no evidence that the representatives of the respondent exerted undue influence. Therefore, the respondent was not liable for any civic disability under section 58(2) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946. Accordingly, the election result was annulled.

### **Result of the Election Judge's Decision**

According to the decision of the Supreme Court, the election result of the Gampola constituency was invalidated, so Gunawardena's membership was also abolished. Accordingly, a by-election was held for the Gampola constituency in May 1948. In the same by-election, Stanley Palpola appeared as an independent candidate, while Ratnakeerthi Senarath Serasinghe Gunawardena represented the United National Party, and three other candidates contested as independent candidates. According to the results of the by-election, Palpola won and was elected to the Parliament.

**11.3. Persons alleged to have committed acts of corruption should also be named as respondents in an election petition**

*Wijewardena v. Senenanayake (1971) 74 NLR 97*

**Background**

Dharmasiri Senanayake (SLFP) and Dudley Senanayake (UNP) contested the 1970 parliamentary election. According to the election results, Dudley Senanayake won and became a Member of Parliament. The petitioner claimed that there was corruption and undue influence during the election campaign and therefore filed an election petition demanding the annulment of this election.

**Election Petition**

In his election petition, Wijewardena had included a report on the incidents of undue influence on corruption on May 2, 1970, in a schedule of his petition, and the names of the six people who exerted that undue influence was also mentioned in the schedule. However, those six were not named as respondents. The election petition was filed stating that as a result of those events, a free and fair election was not held and, therefore, under section

80A of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, requesting the annulment of this election.

### **Hearing of election petitions**

The main issue during the hearing of the election petition was whether the petition was legally filed, as the persons alleged to have been influenced by the petitioner's petition were not named as respondents in the petition. The respondents contended that in accordance with Section 80A of the Ceylon (Parliamentary Elections) Order-in-Council 1946, as amended by Amendment Act No. 9 of 1970, the petitioner should include as respondents in his petition the persons alleged by the petition to have committed acts of corruption.

### **Decision on the election petition**

The decision of the learned Election Judge was that it is a mandatory requirement of Section 80A of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, to include the persons alleged by the petition as respondents in the election petition to have exerted an undue influence which is considered an offence of corruption. Accordingly, the election judge dismissed the petition.

### **Appeal to Supreme Court**

The petitioner, who was not satisfied with the decision of the election judge, appealed against the decision to the Supreme Court. There, the petitioner argued that the election judge's decision that it is mandatory to include the persons who exerted undue influence, as alleged in the petition, as respondents in the election petition, is flawed.

### **Appeal hearing**

The appeal was heard in the Supreme Court by Chief Justice HNG Fernando, Justices Silva and Sirimanna. On February 26, 1971, Chief Justice H. N. G. Fernando, with the concurrence of the other judges, announced the decision in the appeal petition. The Chief Justice stated in his decision that the accused persons who have committed corrupt acts should be included as respondents so that they could appear in the trial and present the defendants on their behalf. According to Section 80A(1) of the Ceylon (Parliamentary Elections) Order-in-Council 1946, charges are filed within 21 days after the result of an election is released and 10 days are given to respond after the notice is sent.

Here, in the case of *Rajapakse v. Kathirgamanathan (1965) 68 N.L.R. 14*, the decision of Judge Tambaiah was cited that if an election petition is brought on the basis of corruption, it is mandatory to name the winning candidate as a respondent. In 1970, Section 80A of the Ceylon (Parliamentary Elections) Order-in-Council 1946 was amended due to this decision. The judge said that the amendment established the legal provision that the winning candidate, as well as the persons accused of corruption in the petition, should be included as respondents.

The Chief Justice also stated that the election judge has no authority to allow the addition of new respondents during the hearing of the election petition and said that he also agrees with the decision of the election judge.

Accordingly, the appeal was dismissed.

**11.4. Affidavits are not necessary to accompany the petition to prove intimidation.**

***Abewardhana Vs Ariya Bulegoda- 1985-SLR-86***

**Background**

For the Hakmana by-election held on May 18, 1983, the candidates were Mahinda Yapa Abeywardena (UNP), Ariya Bulegoda (SLFP), J.L. Sirisena (Independent), and G. Ranatunga (Independent) contested (Alawattage. 2014, p285). According to the voting results, Mahinda Yapa Abeywardena got 23,336 votes, and Ariya Bulegoda got 21,002 votes. The other two candidates received 1291 and 103 votes, respectively. Accordingly, Mahinda Yapa Abeywardena was elected as the winning candidate of the Hakmana constituency.

Ariya Bulegoda submitted an election petition claiming that their votes were reduced due to the intimidation and corrupt practices of the voters during the election campaign by Mahinda Yapa Abeywardena's representatives.

**Election Petition**

The petition named the winning candidate Mahinda Yapa Abeywardena as the first respondent and two of his campaign supporters as the second and third respondents.

Ariya Bulegoda made two allegations in the election petition. Those include;

- ❖ Action under Section 77(a) of the Ceylon (Parliamentary Elections) Council-in-Order, 1946, was committed as most of the voters abstained from voting due to intimidation by the respondents.

- ❖ Acting as agents of the first respondent, the second and third respondents have committed an act compounded under section 77(c) read with section 55(1) of Ceylon (Parliamentary Elections) Order-in-Council, 1946.

Thus, Ariya Bulegoda's election petition requested to abolish Mahinda Yapa Abeywardena's parliamentary seat.

### **Hearing of election petitions**

During the election petition hearing, the respondent filed a preliminary objection and requested the petitioner to dismiss the petition on the following grounds.

- That the security deposited is insufficient
- Failure to include a brief of the facts on which the petitioner relied in terms of section 80 (b) (c) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946
- Failure to include a complete record of corrupt practices as mentioned in section 80b(c).
- Failure to enter affidavits regarding allegations of corrupt practices, as referred to in Section 8B (c)
- Failure of the petitioner to join as respondents the persons alleged to have committed corrupt practices as per Section 80A (1) (b).
- The petitioner has fictitiously named the second respondent in his petition.

The learned Election Judge rejected all the other objections except the last preliminary objection of the petitioner and decided the case.



## **Appeal Petition**

The respondent appealed to the Supreme Court against the decision of the Election Judge.

The appeal was heard by Supreme Court Justices Wimalaratne, Justice Abdul Kader, and Justice L.H. de Alwis.

## **Supreme Court decision**

At the end of the appeal hearing, Judge Wimalaratne, on the concurrence of the other judges, delivered the decision on February 14, 1985.

The petitioner described several types of intimidation through the petition. Accordingly, a mob attacked the petitioner's jeep. Also, the petitioner was illegally detained by a group near a polling station. The second and third respondents, acting as agents of the first respondent, had obstructed the voters by blocking the roads. Voters in four Grama Niladhari divisions were intimidated by the supporters of the 1st respondent. The voters in estate areas were intimidated by the supporters of the 1st respondent.

Here the courts cited the following passage from the book Rogers on Elections (19<sup>th</sup> Edition) Vol. 2 p. 521; "The freedom of an election is an essential element of the common law regarding the validity of an election. If this freedom is prevented, the election is void at common law. Therefore, the said election is void even if a candidate or representative is not taken home by intimidation."

Also, the court stated that in case of public intimidation, what is examined is not the intention and action but the result.

The court stated that the petition should be filed with an affidavit only if the petition raises an allegation regarding the authorization of a corrupt or illegal act and said that an affidavit is not required when raising claims of public intimidation.

Accordingly, the appeal was dismissed.



## Chapter Twelve

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### Prevention of bribery of voters

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For a free and fair vote, an environment should be created where voters can vote without external influences. When an election is imminent, voters can be swayed by offering money or certain goods or services. It is an undue influence on the will of the voters. In order to prevent the bribery of voters, as well as the laws that affect the candidate in the case of proving bribery, some of the court rulings regarding bribery of voters in election petitions are explained in this chapter.

#### **12.1. Existing legal provisions regarding treating and bribery of voters**

In order to vote freely, there should be no undue influence on voters. In the run-up to an election, voters can be influenced by distributing money and certain goods. Therefore, such actions are prohibited by election laws.

Section 78 of the Parliamentary Elections Act No. 1 of 1981 states: “Every person who, corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part the expense of giving or providing any meat, drink, refreshment or provision or any money or ticket or other means or device to enable the procuring of any meat, drink, refreshment, or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector who corruptly accepts or takes

any such meat, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such meat, drink, refreshment, or provision shall be guilty of the offence of treating."

It is also stated in Section 80 of the Parliamentary Elections Act No. 1 of 1981 that the following persons shall be deemed guilty of the offence of bribery:

(a) every person who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector or to or for any other person, in order to induce any elector to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector having voted or refrained from voting at an election under this Act;

(b) every person who, directly or indirectly, by himself, or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure any office, place or employment to or for any elector or to or for any person on behalf of any elector, or to or for any other person, in order to induce such elector to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector having voted or refrained from voting at an election under this Act;

(c) every person who, directly or indirectly by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the return of any person as a Member of Parliament, or the vote of any elector at an election under this Act;

(d) every person who upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement procures or engages, promises or endeavours to procure, the return of any person as a Member of Parliament, or the vote of any elector at an election under this Act;

(e) every person who advances or pays or causes to be paid any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at an election under this Act or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at such election;

(f) every elector who, before or during an election under this Act, directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at such election;

(g) every person who, after an election under this Act, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at such election;

(h) every person who directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any recognized political party or independent group at an election, or on account of and as payment for his having assisted or agreed to assist any recognized political party or independent group at an election, applies to any candidate nominated by such recognized political party or independent group, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or

loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment;

(i) every person who directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate gives or procures any office, place or employment or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment to or for such other person, or gives or lends, or agrees to give or lend, or offers or promises to procure or to endeavour to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.

Section 81 of the Act states that every person found guilty of such an offence is guilty of corruption, and such a person is liable to a fine of up to five hundred rupees and imprisonment for a term which may extend to one year. Apart from that, every person who is convicted of corrupt practice shall, by conviction, become incapable for seven years from the date of his conviction of being registered as an elector or of voting at any election under this Act or of being elected as a Member of Parliament, and if at that date he has been elected as a Member of Parliament, his election shall be vacated from the date of such conviction.

Provisions similar in all respects to this provision are found in Section 79 of the Presidential Election Act No. 15 of 1981, Section 81 of the Provincial Council Elections Act No. 2 of 1988 and Sections 82(c) of the Local Authorities Elections Ordinance (Chapter 262). Also, in section 91 of the Parliamentary Elections Act No. 1 of 1981, which provides for election petitions, it is stated that the election of a candidate as a Member of

Parliament shall be void if he is found guilty of any corruption or illegal act. Also, section 92 (1) states, "if the election judge is satisfied that the result of the election was affected due to an act of corruption, the election can be annulled."

Also, Section 92(2) states that when it is proved that corruption or illegal act has been done by the candidate or with his knowledge or will or by any representative of the candidate, in an election petition, the Election judge shall take action to revoke the office of the said Member of Parliament.

Provisions similar in all respects to this provision are contained in Sections 90, 91(a) of the Presidential Elections Act No. 15 of 1981 and Sections 91(1), 92(1) and 92(2)(a) of the Provincial Council Elections Act No. 2 of 1988. and also found in Sections 82(P) and 82(Q)(1) of the Local Authorities Elections Ordinance (Chapter 262).

**12.2. Free and fair elections and services that fulfil immediate needs to face the drought should also be implemented.**

*Wasantha Jaylath & Others V. Dr Nihal Jayathilake, Secretary to the Ministry of Economic Development & Others - SCFR/258/2014 S.C.M.-12.09.2014*

**Background**

The Uva Provincial Council election was scheduled for September 20. At that time, there was a severe drought throughout the island. The Ministry of Economic Affairs started a program to provide drought relief for the Monaragala district. By the Election Commissioner's letter M/PCE.2014/02 dated September 9, 2014, it was informed to postpone the election until September 20, as the distribution of subsidies will hinder a free and fair election.



Due to this, the petitioners filed a fundamental rights petition saying that the fundamental rights of Monaragala residents are being violated.

### **Fundamental Rights Petition**

This petition was filed on September 10, 2014, i.e. the day after the letter of the said Election Commissioner, and was presented by five petitioners, all identified as residents of Monaragala district. The respondents in the petition were the Secretary of the Ministry of Economic Development, the District Secretary of Monaragala and the Honourable Attorney General respectively and, that they and their families are residing in Monaragala District, and their farming has been damaged due to the severe drought, and they are in great difficulty. They stated in this petition that they had come to know through the press that a donation program had been implemented and that the program had been stopped in the Monaragala district due to reasons unknown to them. Due to this, the residents of Monaragala district, including themselves, were in dire straits without the subsidy. Claiming that they have been inconvenienced and that due to this activity, there has been a violation of the fundamental rights guaranteed by Articles 12(1) and 12(2) of the Constitution, the petitioners who stated that the 1<sup>st</sup> and 2<sup>nd</sup> respondents are responsible for the violation of the said fundamental rights, claimed by their petition from the Supreme Court to issue a declaration that their fundamental rights guaranteed by Articles 12(1) and 12(2) of the Constitution were violated and an interim order to provide drought relief to the residents of Monaragala district and to order the 1<sup>st</sup> and 2<sup>nd</sup> respondents to provide drought relief until the case is heard.

## **Hearing of Fundamental Rights Petitions**

This petition, presented on September 10, 2014, was examined by the Supreme Court judges, Chief Justice Mohan Peiris and President Counsellor Aluvihare, President Counsellor Jayawardena. The court that heard the petition promptly gave its decision on September 12, 2014. Chief Justice Mohan Peiris gave the decision with the concurrence of other judges.

The Court observed that the petitioners had not been able to carry out any agricultural activities due to the lack of water caused by the drought and accepted that they had suffered severe hardship. Also, it was observed that there is a conflict with Article 12 of the Constitution by not implementing a program that is implemented throughout the island in the Monaragala district.

The learned government counsel appearing for the third respondent Attorney General stated that the Election Commissioner had stopped the distribution of dry subsidies in Monaragala district to ensure that the Uva Provincial Council elections are held in Monaragala district. Accordingly, the Election Commissioner's letter M/PCE. 2014/02, dated 09<sup>th</sup> September 2014, was submitted to the court. It was further stated that the reason for stopping the program was that some candidates could gain an unfair advantage through the program distribution of dry subsidies. In this regard, the opinion of the Chief Justice was that it is essential to provide free and fair elections as well as providing assistance for emergency needs caused by dry weather. Accordingly, the court informed its decision that the distribution of subsidies should be done only by the District Secretariat and the Divisional Secretariat. Also, under no circumstances should candidates or their representatives or politicians be involved in this election be engaged in such relief work. It was also stated that the Secretary of the Ministry of Economic Development, the first respondent, should ensure that these persons are not

involved in the distribution of drought subsidies. It was also ordered that the first respondent provide information to the Election Commissioner regarding the program's functioning. The court directed the Election Commissioner to issue orders to comply with the parameters set by the law and ordered the government advocate who participated on behalf of the Attorney General to communicate this decision to the Election Commissioner.

### **Execution of Supreme Court decision**

After this judgment, the first respondent issued a letter to the Divisional Secretaries on 15th September 2014, informing them to resume the dry subsidy distribution process. It was also informed to contact the Economic Development Officer, Devinaguma Development Officer, Agricultural Research Assistant Officer, and Village Officer for these activities. It was also advised that these distributions would be made on 16th September 2014 and a review would be done on 17th, and a report would be forwarded to the district secretary if anyone has not received the subsidy; then distributions would be made in the following days.

Accordingly, the program of providing 2500 rupees as a dry subsidy was implemented. On September 16, 2014, the Election Commissioner informed the first and second respondents in a letter that since it has been observed that the relevant subsidy distribution activities are not being carried out in accordance with the Supreme Court decision, to comply with the Supreme Court decision immediately and to ensure that the dry subsidy distribution program is not used for the promotion of any political party candidate. Officers and police officers were given instructions.

### **The result of the appellate decision**

After the decision of the Supreme Court, the Secretary of the Ministry of Economic Development, Dr Nihal Jayathilake (1st respondent), sent the letter dated September 15, 2014, and dated 02 September 2014 to all the Divisional Secretaries of Monaragala District. The letter titled "Providing emergency relief to the people affected by the drought" stated that according to the decision of the Supreme Court on 04.09.2014, drought relief should be given to all the families in Monaragala district without any discrimination, and for that, the three rural local officials belonging to their ministry, the Economic Development Officer, Divinaguma Development Officer and Agriculture Research Assistant and Grama Niladhari under the Ministry of Public Administration should be used for this, and instructions regarding the method of distribution of the aid. It is stated at the end of the article that "since this drought relief work is a task carried out on the order of the supreme authority and is a task carried out in accordance with Article 27(8) of Chapter 6 of the Constitution of Sri Lanka, it is hoped that you will carry out all the necessary tasks to carry out these duties with great commitment and high priority."

### **12.3. Misuse of public property during elections should be audited**

*PAFFREL & Rohana Hettiarachchi v. Mahinda Deshapriya & 8 Others S.C.(F/R) Application No:76/2015- 05.05.2016*

#### **Background**

The then-incumbent President, Mahinda Rajapaksa contested as a candidate for the presidential election held on January 8, 2015. In the run-up to the election, various

ministries and agencies of the government had made particular subsidy actions. The PAFFREL filed a fundamental rights case claiming that equality before the law mentioned in the constitution was violated by using public property for election purposes to get votes for its candidate.

### **Fundamental Rights Petition**

Filed on March 14, 2015, the petitioners in this fundamental rights petition were PAFFREL and its director Rohana Hettiarchchi. The petition named the Election Commissioner, Auditor, Inspector General of Police, Director General of Road Development Authority, Director General of Central Cultural Fund, former President's Secretary (at the time of the election) and Attorney General as respondents 1 to 9.

The petitioners, who emphasized the responsibility of every person to protect the public property contained in Article 28(d) of the Constitution, pointed out in the petition that the following events were observed during the election held on January 8, 2015.

- ❖ Use of public property evading the provisions of law.
- ❖ Misuse of public property.
- ❖ Non-action of government agencies that should work to prevent misuse of public property.
- ❖ Ignoring the guidelines, the relevant authorities give to prevent the misuse of public property.

The petitioners also brought to the attention of the court the circular issued by the Election Commissioner to prevent the use of the public property for election campaign activities after the announcement of the election.

Also, the petition described several incidents where the public property was used for election purposes.

The first thing was about the distribution of "Sil Cloth". The petition stated that about 5 meters of white cloth had been packed and distributed along with a brochure about a presidential candidate running for the presidential election. About eight hundred thousand such sets have been distributed, and the cost is about 100 million rupees. Also, when the petitioners inquired about this from the Ministry of Buddha Sasana, it was stated in the petition that the funds were not provided by the Ministry but by the Temple Trees. The petition stated that this is a violation of the provisions of the constitution and financial regulations. Also, it was stated in the petition that complaints were made to an Assistant Election Commissioner stating that the distribution of Sil cloth is an obstacle to free and fair elections and it constitutes the use of public property for election purposes.

The second incident mentioned in the petition was the printing and distribution of Liths (Calendar with auspicious times) to promote a presidential candidate. The petitioners also stated that they have complained to the Human Rights Commission of Sri Lanka. They pointed out that the provision of these Sil cloths and Liths is an act compounding the crime of corruption under Section 70 of the Bribery Act.

It was also submitted that employees of the Road Development Authority, Central Cultural Fund and Port Authority had been employed to promote a candidate. Although the petitioners complained to the relevant authorities regarding these incidents, the petitioners stated that no action was taken to prevent the acts, and the petitioners stated that their fundamental rights, as stated in Article 12(1) of the Constitution, have been violated. Accordingly,

- ❖ To issue a declaration that the fundamental rights guaranteed by Article 12(1) of the Constitution

have been violated by one or more of the respondents mentioned in the petition,

- ❖ To order the respondents to take criminal disciplinary or other legal measures against the persons who used the public property for election campaign activities in the 2015 presidential election,
- ❖ To issue an order to the 1st respondent Election Commissioner to submit a complete report to the court regarding the events mentioned in the petition,
- ❖ To direct the Director General of the Road Development Authority (4th respondent) and the Director General of the Central Cultural Fund (5th respondent) regarding the relevant incidents,
- ❖ The court was also requested to issue orders to the Secretary of the Ministry of Finance (6th respondent) and Auditor General (7th respondent) to assess the loss of the misuse of the public property described in the petition and submit a report to the court.

### **Petition hearing**

Chief Justice K. Sripavan and Justice Anil Gunaratne of the Supreme Court heard the petition. The Deputy Solicitor General, who appeared for 1 to 5 and 7 and 9 respondents, stated before the court that the Auditor General's report would be submitted to Parliament and the Court. It was also informed that the report would be submitted within two weeks from that date.

Accordingly, the petitioner's counsel informed the court that they did not intend to proceed with the case, and the proceedings in the case were terminated.

### **After court proceedings**

The Attorney General initiated the High Court case No. HC 8086/2015 against Basil Rajapaksa, who was the

Minister of Economic Development and Anusha Palpita, who served as the Director General of the Telecommunications Commission, regarding the distribution of Sil Cloth highlighted by this fundamental rights petition on September 07, 2017. Both were convicted by the High Court, and both were acquitted by the Court of Appeal on November 19, 2020, on appeal against that High Court decision (CA 413-414 2017 - C.A.M.19.11.2020). (For details on this case, see Chapter 15) Also, another charge in this fundamental rights case was the distribution of 'Liths' in anticipation of votes. During the 2015 presidential election, the Attorney General filed a case against Basil Rajapaksa, who was the Minister of Economic Development, and Kitsiri Ranawaka, who was the Director General of the Divineguma Development Department, for printing and distributing five million of Liths bearing the image of the then-presidential candidate Mahinda Rajapaksa at the expense of two and a half million rupees belonging to the Divineguma Development Department. Both were indicted and acquitted by the High Court on 01 February 2022.

#### **12.4. Giving money to voters for new water connections is bribery.**

*Sunil Shantha V Tharanga Harshaka Priya Prasad Dissanayake & Others -HC (Monaragala) Election petition 1/2018 HCM.13.09.2021*

##### **Background**

In the local authorities election held on February 10, 2018, the petitioner from the United National Party and the first respondent Sri Lanka Podujana Peramuna, contested for the election Maduraketiya constituency to the Monaragala Pradeshiya Sabha. According to the voting results, the respondent got 2157 votes, and the petitioner received only 855 votes. Accordingly, the



respondent was appointed to the Monaragala Pradeshiya Sabha. The petitioner filed an election petition in the Uva Provincial High Court seeking to annul the appointment of the first respondent, alleging that the respondent's agents bribed the voters during the election campaign.

### **Election Petition**

The petition alleged the following corrupt/illegal acts by the first respondent.

- ❖ Provision of money and/or materials and/or equipment by the 01st respondent and/or agents to the local voluntary organizations requesting them to support the 01st respondent to obtain votes for the 01st respondent.
- ❖ Provision of new domestic electricity connections to specific houses in the Maduruketiya constituency at the expense of the 01st respondent by the 01st respondent and/or agents with the aim of obtaining votes for the 01st respondent and/or requesting to vote for the 01st respondent.
- ❖ Provision of new water connections to specific houses in Maduruketiya Constituency on or around 28th November 2017 at the expense of the 01st respondent and/or his representatives with the aim of getting the 01st respondent to receive votes for the 01st respondent.
- ❖ After the announcement of the election, the 01st respondent and/or the 01st respondent's representatives gave money to the United Funeral Aid Society at Maduruketiya and requested to vote for the 01st respondent by providing material assistance to the Oil Farm Ranamayura Sports Club and the Kalugala Funeral Society.

Accordingly, the petitioner states that due to the above actions of the 01st respondent, he has committed the

offence of giving bribes, which is the corrupt practice mentioned in Section 82(d) of the Local Government Authorities Ordinance.

The respondents in this election petition are the candidate who won the Maduraketiya Division and 83 candidates who contested for the Monaragala Pradeshiya Sabha in that election, and the three members of the Election Commission. The Election Commissioner General, the Assistant Returning Officer of Monaragala District, the Returning Officer of that district and the Officer in Charge of the Police Station of Monaragala were also named, according to which 90 respondents were named in the petition.

### **Petition hearing**

The National Coordinator of the Centre for Monitoring Election Violence has filed a complaint with the Election Commission alleging that the first respondent is giving bribes to the voters. According to the complaint, an investigation has been conducted by an investigation officer of the Election Commission. According to the officer's investigation report, a single person paid money to Monaragala Bank of Ceylon to get new water connections for 20-30 people in the Maduraketiya area and the person was identified by the national identity card number of that person, and he is a government employee. The officer who prepared the investigation report of the Election Commission had given evidence that complaints had been received about participation in election campaign activities.

In addition to that, the petitioners had submitted to the court the money handover vouchers of 94 people who got new water connections and the photocopies of the money deposit slip to the Bank of Ceylon related to each of those vouchers from the Monaragala water supply office. The documents were obtained using the provisions of the Right to Information Act. According to those documents,

the payment was made by the same person. The person has given evidence in court and has admitted that he provided support for the election activities of the first respondent.

Several people who obtained water connections came forward for evidence, stating that they paid for these with the money they borrowed. However, no evidence was presented to confirm those facts. Also, there was a contradiction in their statements given to the police.

### **Decision on the election petition**

Several provincial High Court Judges examined this election petition, and finally, the petition was examined and given a decision by High Court Judge Ranga Dissanayake. In the judgment given on September 9, 2021, the judge stated that according to the evidence presented against the 1st respondent, the 01st respondent consented to the corrupt practice of bribery as stated in the Local Authorities Elections Ordinance in the election held for the Maduruketiya Constituency for the Monaragala Pradeshiya Sabha and knowingly committed by an agent of his and accordingly the said act of corruption has been proved in terms of section 82 (c) (2) and therefore the election of the first respondent as a member in terms of section 82 (n) of the said Act is annulled.

### **Appeal to the Supreme Court**

*D.M. Tharanga Harshanka Prasad v. W.M. Sunil Shantha*

Dissatisfied with this decision, the 1st respondent appealed against the decision to the Supreme Court. The Appeal Court dismissed the appeal bearing no. SC (SPL) Application 228-2021 S.C.M. 07.06.2022)

### **Effect of judicial decision**

This decision can be considered a good judgment which shows that giving bribes to the voters to win the election and get preferences is illegal, and even if an election is won, one's membership can be revoked. Accordingly, the efforts of candidates to win elections by bribing voters in the future will be limited.



## Chapter Thirteen

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### Rejection of nomination

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A candidate's election process officially begins with the Returning Officer's acceptance of the nomination paper. Formal preparation and submission of a nomination paper are required by law. This chapter describes the legal provisions given to the Returning Officers by various Election Acts to reject a nomination paper and the court decisions challenging the decisions of the Returning Officers.

#### **13.1 Legal status regarding the rejection of the nomination**

According to Section 19(1) of the Parliamentary Elections Act No. 1 of 1981, the Returning Officer must reject a nomination paper with the following disqualifications. Accordingly,

- (1) The returning officer shall, immediately after the expiry of the nomination period, examine the nomination papers received by him and reject any nomination paper
  - (a) that has not been delivered in accordance with the provisions of subsection (4) or subsection (5) of section 15; or
  - (b) that does not contain the total number of candidates required to be nominated in terms of Article 99 (2) of the Constitution; or
  - (c) in respect of which the deposit required under section 16 has not been made; or
  - (d) where the consent of one or more candidates nominated has not been endorsed on the nomination paper; or
  - (e) where the signature of the secretary in the case of a recognized political party or of the group leader in the case of an independent group does not appear on the

nomination paper or where such signature has not been attested as required by subsection (3) of section 15.

In case of such rejection, the Returning Officer should inform the party secretary/independent group leader about the rejection.

Provisions similar in all respects to this provision are found in Section 15 of the Presidential Election Act No. 15 of 1981, Section 17 of the Provincial Council Elections Act No. 2 of 1988 and Section 31 of the Local Authorities Elections Ordinance (Chapter 262).

**13.2. Other candidates should not be punished for the fault of one candidate.**

*Indra Kumar v. Dayananda Dissanayake & Others*  
(2001) 2 Sri L.R. 90

**Background**

The background to this case is the nomination paper submitted by the National Unity Alliance (NUA) party for the Batticaloa district for the parliamentary elections held on 10 October 2000. Representatives of several political parties from the TELO party protested to the District Returning Officer that the nomination paper had not been formally submitted, but the Returning Officer accepted the nomination paper regardless of the objection. The petitioner, a TELO Party candidate, filed a petition in the Court of Appeal seeking a writ against the decision of the Returning Officer.

**Writ Petition**

Through this writ petition, the petitioner mentioned several deficiencies in the nomination paper of the National Unity Front Party. Those include;

- ❖ That the 4th respondent Chellaiah Rajendran was in Malaysia, and his signature was forged on the nomination paper.
- ❖ That the signature of the 10th respondent was forged as he was in the custody of the Kandy Special Investigation Unit.

In his petition, the petitioner claimed that several representatives of political parties protested to the second respondent, who was the District Returning Officer of Batticaloa, to reject the nomination paper and the second respondent accepted the nomination paper regardless of the said objection. The petitioners asked the Court to issue a mandamus writ against the first respondent, the Election Commissioner and the second respondent, the District Returning Officer, to reject the nomination papers.

### **Petition hearing**

This writ petition, which was numbered Appeal Case No. CA.NO.1017/2000 was considered by the Court of Appeal Judge J. N. D. De Silva. The petitioner did not submit any objection regarding the nomination paper, but the representatives of several political parties submitted objections, and newspaper reports were also submitted to the court to certify that. The position of the Deputy Solicitor General, who appeared for the first and second respondents, was that the Returning Officer had dealt with the objection regarding this nomination paper in accordance with the provisions of Section 19(1) of the Parliamentary Elections Act.

Accordingly, if any disqualification is mentioned in Section 19(1) of the Act, the said nomination paper should be rejected. It was therefore held that the scrutiny of the nomination papers of the Returning Officer does not extend beyond the scrutiny of the documents supplied to him.



Also, Section 7(5) of the Parliamentary Elections Act includes information regarding the conduct of inspections by the Returning Officer, and it states that an inspection should be conducted to ascertain whether a political party is recognized. Accordingly, the Deputy Solicitor General noted that the Returning Officer's investigation is limited to that fact.

Attorney-at-Law RKW Gunasekara, who appeared for the 5th respondent, was of the view that the responsibility of the political party is limited since a nomination paper is submitted in an election conducted under the proportional representation system. It was also said that if the nomination paper itself is rejected due to one person's error, it will be unfair to the voters who are going to vote for that party.

### **Decision on Petition Hearing**

The decision of the hearing of this petition was announced by Court of Appeals Judge J. N. D. de Silva on October 9, 2000. In his decision, the judge stated that the Returning Officer should strictly limit himself to the matters mentioned in 19(1) of the Parliamentary Elections Act when deciding to reject a nomination paper. Even if it is confirmed that a candidate's signature has been forged, the judge stated that the other candidates could not be punished for the fault of one candidate, stating that by rejecting the nomination paper in such a case, the voters will not get a chance to make their choice. Accordingly, the petition was dismissed.

**13.3. The Returning Officer is not expected to investigate the qualifications/disqualifications mentioned in the Constitution.**

*Vigneswaran and Stephen v. Dayananda Dissanayake and Others (2002) 3 Sri. L.R 59*

**Background**

The background to this case was the Parliamentary General Election held on December 5, 2001. For this election, EPDP and TULF political parties had submitted nomination papers for the Colombo district. Petitioner Vigneswaran acted as the authorized representative of EPDP. Knowing that one of the candidates mentioned in the nomination list of the TULF Party was already working as the Chairman of the Palm Development Board when Vigneshwaran protested for the nomination, the District Returning Officer was requested to cancel the nomination paper as there is a person in the nomination paper who is not eligible to be in the candidate list. However, because the District Returning Officer rejected the protest, a writ petition was filed by Wigneswaran requesting to annul the decision of the Returning Officer.

**Writ Petition**

Section 19(1) (b), read with Sections 14 and 15(1) of the Parliamentary Elections Act No. 1 of 1981, provides that a person is ineligible to stand as a candidate in an election in terms of Articles 91(1) (e) and 99(3) of the Constitution. The petitioner stated that a person holding the position of Chairman of the Palm Development Board was on the list of candidates for the Colombo district of the TULF, and on that basis, the Colombo District Returning Officer was requested on 27 October 2001 to reject the said nomination paper, but it was not rejected.

Therefore, to issue a writ of certiorari with setting aside the decision not to reject the said nomination paper. Also,

this petition was filed to issue a writ of mandamus to the respondents to treat the said nomination paper as a rejected one.

### **Petition hearing**

The petition was heard by Court of Appeal Judge Gamini Amaratunga. The petitioners submitted facts that the person named as the 4th candidate in the TULF party nomination paper (the 8th respondent in this petition) is the Chairman of the Palm Development Board and the petitioners submitted facts that he is unfit to sit in Parliament as a Member of Parliament as his annual salary is more than 72000 rupees.

### **Decision on Petition Hearing**

On November 23, 2001, Judge Gamini Amaratunga gave his decision on the writ petition. Accordingly, the judge declared that if a valid nomination paper prepared in accordance with Sections 15(1), (2) and (3) of the Act is not submitted as mentioned in Section 15(4) or (5) of the Act, the said nomination paper shall be rejected.

Also, the judge emphasized that the provisions of 19(1) (a) to (e) of the Act include the provisions related to the rejection of a nomination by the Returning Officer and stated that the said provisions do not mention the unfitness or unfitness of a candidate. According to the provisions of the Act, the law does not require an investigation or an investigation before rejecting a nomination paper, but the rejection of the nomination paper is based on the facts, and discretion is not relevant. Also, the judge further stated in his decision that according to section 19(1) of the Election Act, the role of the Returning Officer is administrative in nature, and he has the right to rely on the certificate mentioned in the 4th column of the nomination paper that the persons

named in the nomination paper are eligible to submit nominations.

Accordingly, the request to issue writs against the decision of the Returning Officer was rejected.

**13.4. The nomination paper must be signed by the party secretary in pen or pencil.**

*Ediriweera, Returning Officer Vs Kapukotuwa, General Secretary, United National Party (2003) 1 Sri L.R 228*

**Background**

In the year 2002, the United National Party presented a nomination paper for the election held for the Akurassa Pradeshiya Sabha. At the time of objecting to that nomination, a person who submitted an objection to the Returning Officer said that the United National Party's nomination paper did not have the signature of its Secretary General. Accordingly, the Returning Officer rejected the nomination paper. Against that refusal, the General Secretary of the United National Party submitted a petition to the Court of Appeal for a writ.

**Writ Petition**

The petition submitted by the General Secretary of the United National Party to the Court of Appeal claimed that the Returning Officer committed an error by rejecting the nomination paper as it was duly completed and had the official seal bearing the name of the Secretary-General. Accordingly, it was requested issue a writ ordering the Returning Officer to accept the nomination paper and an interim restraining order not to hold the election for Akurassa Pradeshiya Sabha until the petition hearing is over.

## **The decision of the Court of Appeal**

The Appellate Court heard this petition numbered under Appeal Case No. 342/2002 and issued a writ of mandamus to the Returning Officer to accept the United National Party nomination paper by granting the relief sought by the petitioner.

## **Appeal to the Supreme Court**

Dissatisfied with the Court of Appeal decision, the Returning Officer appealed to the Supreme Court against the said decision. The appeal was heard by Chief Justice Sarath Nanda Silva and Supreme Court Justices Smile and Weerasuriya. At the end of the hearing, the Chief Justice announced his decision on June 19, 2003, with the concurrence of the other two judges.

The judge drew attention to Section 31(1)(e) of the Local Authorities Elections Ordinance (which was in force by 2003) and stated that the lack of a proper signature of the party secretary is a reason for rejecting a nomination. Also, the Chief Justice has quoted a statement of Justice Sansoni in the case of *Mayappan vs Manchanayake* (62 NLR 529) in his decision as to what constitutes a signature.

“Given the ordinary meaning of the words, when a document is required to be signed or a person's signature is required on a document, the person's name should be written by hand with a pen or pencil” and in this statement of Justice Sansoni that the signature placed in this way and the Chief Justice made an additional point also as “represents the person writing or doing the act.”

Accordingly, the decision of the Court of Appeal was set aside, and the appeal of the Returning Officer was accepted. Thus, all the authorities were ordered to conduct further legal proceedings for the Akurassa Pradeshiya Sabha polls.

**13.5. Nomination papers containing candidates who have not completed the required age will be rejected.**

*Weragoda vs Dayananda Dissanayake and others*  
(2006) 2 Sri LR.197

**Background**

The nomination papers were submitted on behalf of the United National Party for the local government elections held in 2006 by the petitioner as the General Secretary of the United National Party. One of the candidates in the said nomination paper was rejected by the Returning Officer on the ground that he had not completed 18 years of age as of 1st June 2004.

Against that decision, the petitioner's General Secretary filed a petition seeking a writ in the Court of Appeal.

**Writ Petition**

The petitioner stated in his petition that the candidate in question was born on 28th February 1987, and hence his age has exceeded 18 years. Also, the Returning Officer's notification regarding the rejection of the nomination paper did not clearly state the reasons for the rejection. It was also stated that it is not fair to reject the entire nomination paper due to the problem of one candidate. Accordingly, the petition sought a writ of certiorari setting aside the decision of the Returning Officer and a writ of mandamus against the 2nd respondent to accept his party's nomination paper.

**Petition hearing**

This petition, which was numbered Appellate Court Case No. CA 330/06 was heard by Appellate Court Judge K Sripavan. The hearing of the petition was held on 16, 17 and 20 to 22 March 2006.

According to the changes made by the Amendment No. 25 of 1996 to the Local Authorities Elections Ordinance, 40% of the candidates should be young candidates. Another point raised during the hearing of the petition was that the 2004 electoral roll was used for this election. Citizens who have completed 18 years of age on June 1, 2004, will be included in the electoral roll. It was also revealed during the petition hearing that the voter list has come into force from 1st June 2005.

### **Decision on Petition Hearing**

Judge Sripavan, who heard the petition, gave his decision on March 26, 2006. The judge stated that although the candidate in question has completed 18 years of age, according to the provisions of the Act, he must have completed 18 years of age not at the time of submission of nominations but on the date of preparation of the voter list on which the poll will be based. Accordingly, this poll was based on the 2004 electoral roll. Therefore, the judge emphasized that the age of the young candidate should be 18 years on June 1, 2004. Accordingly, the judge stated in his decision that the age of the concerned candidate had not completed 18 years by that date. Also, in section 31 of the Local Authorities Elections Ordinance, although there are 7 cases in which a nomination can be rejected, it does not state that a nomination can be rejected on the grounds that the number of young candidates is not complete, but that section should be read with section 81, which is about young candidates. The writ petition was dismissed, stating that the decision of the Returning Officer was correct.

**13.6. Delivery of nomination in the presence of the authorized representative under his control and on his behalf is a formal delivery.**

*Kelepotha Vithanage Ariyaratne and Another v. S.T. Kodikara, Returning officer, District Secretariat Galle and others - SC Writ Application No. 12/2018 S.C.M-30.08.2019*

**Background**

Arrangements were made to hold the local government election on February 10, 2018. Acceptance of nominations for that was scheduled from December 17, 2017, to December 21, 2017, at 12 noon. The nomination submitted by the Democratic United National Front for the Elpitiya Pradeshiya Sabha was rejected by the Galle Returning Officer. The Galle Returning Officer stated in his letter that the nomination was rejected due to the submission of the nomination by a person who is not the authorized representative. Against this decision of the Returning Officer, a petition was submitted to the Supreme Court for a writ by the authorized representative of the Democratic United National Front party for the Elpitiya Pradeshiya Sabha polls.

**Writ Petition**

This writ petition was submitted by three petitioners, all three petitioners are members of the Democratic United National Front, and the first petitioner is the authorized representative for the Elpitiya Pradeshiya Sabha Elections as per the provisions of the Local Authorities Elections Ordinance. The petition named the Returning Officer of Galle District, the three members of the Election Commission and the Assistant Election Commissioner of Galle as respondents 1, 2, 3, 4, and 5, respectively, the secretaries of the political parties who had submitted nominations for the Elpitiya Pradeshiya



Sabha as respondents 6 to 9 and the Attorney General as the 10th respondent.

That the first petitioner and the second petitioner took the relevant nomination papers and confirmation documents and went to the Galle District Secretariat office on 21 December 2017 to hand over the nomination to the Returning Officer. The petitioners, in their petition, also claimed that the first nomination papers, additional nomination papers and related documents were kept in two file covers. The petition further explained that there was a "help desk" near the auditorium of the district secretariat where a group of officials checked all these documents and returned them, and accordingly, the two entered the auditorium where nominations were handed over. At that time, the first petitioner Returning Officer and the fifth petitioner Assistant Election Commissioner were sitting near a table, and the first petitioner (authorized representative) tried to hand over the nominations and the two files containing the relevant documents to the Returning Officer, whereupon the Returning Officer asked them to hand over the nominations without the file covers. As stated the petitioners stated that they removed the file covers and gave the nomination papers and documents to the second petitioner, and he handed them over to the Returning Officer. After that, the Returning Officer asked for the second petitioner's national identity card to record the information of the second petitioner as the person who handed over the nomination, and the petitioners objected to it, but the election officer insisted that the second petitioner handed it over, but they objected to it. The petition stated that they recorded the information on the National ID card, and then they left the hall. It was stated in the petition that closed-circuit cameras had been activated in this hall and this incident could be confirmed by it. The petition stated that the first respondent returning officer rejected their nomination papers on the grounds that the nomination papers were handed over by a person who was not an authorized officer. Also, on

December 26, 2017, the first respondent sent a letter to him informing him in writing that the nomination papers were rejected under section 31(1)(a) of the Local Authorities Elections Ordinance due to non-fulfilment of the requirements of section 28(5) thereof.

On these facts, the petitioners filed a writ petition in the Supreme Court on January 10, 2018, in accordance with the provisions of Article 104A read with Article 140 of the Constitution. To issue a writ of certiorari annulling the decision of the first respondent Returning Officer on 21st December, to issue a writ of mandamus compelling the first respondent to accept the nomination paper of the Democratic United National Front, and to issue a writ of mandamus compelling him to set a new polling date. The petition also requested the Supreme Court to issue an interim restraining order not to hold the election for the Elpitiya Pradeshiya Sabha until the hearing of this petition is over.

### **Petition hearing**

The petition was heard by the Supreme Court Judges, President Counsellor Prasanna Jayawardena, LTB Dehideniya and EAGR Amarasekara. After examining the submissions and documents of the petitioners' lawyersAttorney-at-Laws and after considering the submissions of the Additional Solicitor General who appeared for the 1st to 5th and 10th respondents and the submissions of the other respondents, an interim order not to hold the Elpitiya Pradeshiya Sabha polls until the hearing of this petition is concluded was issued on January 10, 2018.

During the hearing of the petition, the first and second respondents stated that the second petitioner delivered the nomination, and another person accompanied it, and they did not know him. Also, these respondents, who denied that the petitioners were influenced or protested,

stated that on the day the nominations were received, the closed-circuit cameras in the auditorium were not operational, so they could not be seen. The first respondent had submitted to the court the copies of the nomination papers accepted by him. He also produced a photograph in which the second petitioner was seen handing over the nomination to the first respondent. The fifth respondent, the Assistant Election Commissioner and another person were depicted on the side.

### **Supreme Court decision**

On August 19, 2019, Supreme Court Judge President Counsel Prasanna Jayawardena announced the decision of the petition hearing with the concurrence of the other judges. The judge stated in his decision that according to the evidence presented to the court, it had been confirmed that the 1st and 2nd petitioners went to the auditorium of the Galle District Secretariat on the morning of December 21 in anticipation of handing over the nomination papers. Also, the first and second petitioners have stated that in the photograph submitted by the first respondent, the first petitioner is standing next to the Second petitioner, handing over the nomination papers. The judge has stated in his decision that it is clear that the first and second petitioners were close to the first respondent who accepted the nomination. The judge also held that the second petitioner had physically handed over the nomination to the first respondent acting on behalf of the first petitioner and under his control. Also, the second petitioner has surrendered his identity card at the insistence of the first respondent. Taking these facts into consideration, the judge accepted the petition of the petitioners and stated that it could be accepted that the first petitioner has done a "handover of the form" as intended by section 28(5) of the Local Authorities Elections Ordinance and a writ of certiorari setting aside the decision of rejecting the nominations, a writ of mandamus to accept the

nomination papers and a writ of mandamus to set a new date of polling was issued.

As a result of this decision of the Supreme Court, polls were held for the Elpitiya Pradeshiya Sabha on 11 October 2019. Accordingly, the Democratic United National Party also competed for the polls, and that party could only get 310 votes, that party could not win a member seat. ([https://elections.gov.lk/web/wp-content/uploads/election-results/local-authorities-elections/Elpitiya\\_PS\\_2019.pdf](https://elections.gov.lk/web/wp-content/uploads/election-results/local-authorities-elections/Elpitiya_PS_2019.pdf) - 25/03/2022)



## Chapter Fourteen

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### Election Petitions

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Challenging the result of an election, as well as the appointment of an elected candidate, can be challenged through election petitions. In this chapter, the existing legal provisions related to election petitions under various election laws and some decisive judgments given by the Court of Appeal and the Supreme Court, which heard the election petitions, are described.

#### 14.1 Legal Provisions Relating to Election Petitions

Election petitions challenge the result of an election or the appointment of a candidate. The history of election petitions in Sri Lanka is also old.

The VII Chapter of the Parliamentary Elections Act No. 1 of 1981 is devoted to the legal provisions related to election petitions.

#### **Annulment of election in a constituency on an election petition**

According to Section 92 (1) of the Act, if the Election Judge is satisfied that the result was influenced by a significant number of voters abstaining from voting for the party/independent group of their choice due to bribery, entertainment or intimidation or that the election was conducted in a way that did not comply with the provisions of the Act, election in respect of any electoral district shall be declared to be void.

### **Annulling the membership of the winning candidate**

According to 92(2) of the Parliamentary Elections Act, if any of the following reasons are proved, the Election Judge shall declare the membership of the winning candidate.

- ❖ 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
- ❖ Employing a person who has not exceeded seven years of conviction for an election corruption act in the election campaign.
- ❖ Employing a person subjected to civic disability in an election during that period.
- ❖ Candidate was, at the time of his election, a person disqualified for election as a Member.

### **Jurisdiction relating to election petitions**

According to Section 93 of the Parliamentary Elections Act, the Court of Appeal has the power to hear petitions related to a parliamentary election.

Section 92 of the Presidential Election Act states that the Supreme Court has the power to hear petitions related to a presidential election.

Section 93 of the Provincial Council Elections Act states that the Court of Appeal has the power to hear poll petitions in a provincial council election.

It is stated in Section 82R of the Local Authorities Elections Ordinance that the power to hear petitions in a local authorities election is also available to the relevant Provincial High Court.

### **Persons authorized to present election petitions**

According to Section 95 of the Parliamentary Elections Act, a candidate or a voter in the relevant election has the ability to submit an election petition.

### **Reliefs that may be claimed through an election petition**

In terms of Section 96 of the Parliamentary Elections Act, the following reliefs may be sought in an election petition,

- ❖ To declare the election of a constituency void.
- ❖ To make a declaration cancelling the election of an elected candidate
- ❖ To make a declaration that a candidate has been duly elected.

### **Parties/Respondents in an election petition**

According to Section 97 of the Parliamentary Elections Act, the following persons should be included as respondents in an election petition.

- ❖ All candidates other than the petitioner should be included as respondents in the event of a challenge to an election.
- ❖ Any other candidate or person against whom allegations of any corrupt or illegal practice are made in the petition.

### **Contents of an Election Petition**

According to Section 98 of the Parliamentary Elections Act, the following points should be included in a petition.

- ❖ Right of petitioners to present the petition
- ❖ That the election was held and its result



- ❖ A brief statement of the important facts relied upon by the petitioner
- ❖ As many details as possible of corruption or illegal acts and affidavits to certify the same
- ❖ Relief orders sought by the petition

### **Time for presentation of Election Petitions**

Section 108 of the Parliamentary Elections Act states that an election petition must be submitted to the court within 21 days from the date of publication of the election results in the Gazette.

Section 102 of the Presidential Election Act states that a presidential election petition must be submitted to the court within 21 days from the date of publication of the election in the Gazette.

Section 108 of the Provincial Council Elections Act states that an election petition must be submitted to the court within 21 days from the date of publication of the polling results in the Gazette.

Section 82(a)(e) of the Local Authorities Elections Ordinance states that an election petition must be submitted to the court within 21 days from the date of publication of the poll results in the Gazette.

### **The function of the Election Judge**

When referred to the Election Appeal Court, it should be heard promptly, and the decision should be prepared in writing at the end of the hearing. Also, the Parliamentary Elections Act states that a report should be prepared and sent to the President at the end of the judgment. (In case no appeal has been taken against the decision of the Election Judge)

### **Appeal against the decision of the election judge**

Section 102 of the Parliamentary Elections Act states that a person who is dissatisfied with the decision of the Election Judge can appeal to the Supreme Court within one month of the said decision.

The Supreme Court also has powers to hear appeals in petitions related to provincial councils and local government elections.

Presidential election petitions are heard by the Supreme Court, so there is no appeal against the decision.

### **Procedure for Election Petitions**

The procedure for voting petitions is given in the schedule of the relevant election acts.

#### **14.2. An election petition does not concern only the petitioner; it concerns the constituency itself.**

*Don Alexander v. Leo Fernando 49 NLR 202 - Buttala Election Petition 1947*

### **Background**

In the 1947 parliamentary election, W. Leo Fernando, who contested for the Buttala constituency from the United National Party, was elected to parliament, and T. Don Alexander, who contested the election independently, was voted second. Later, Alexander filed an election petition challenging Leo Fernando's parliamentary appointment and later sought the court's permission to withdraw.

### **Election Petition**

In the 1947 parliamentary elections, the respondent Leo Fernando presented allegations of general intimidation and undue influence and entered into agreements with the state in an election petition based on which claimed to void the parliamentary membership of Leo Fernando. Also the petitioner had also deposited 5000 rupees as security while filing the petition with the court.

### **Petition hearing**

Justice Nagalingam heard the election petition. During the petition hearing, the petitioner requested the permission of the court to withdraw the petition. He informed the court that he intends to withdraw the petition as he is unable to bear the necessary expenses to carry the petition forward.

### **Decision on the election petition**

Judge Nagalingam gave the decision on March 5, 1948, whether to allow the withdrawal of the election petition. The judge stated that hearing an election petition is not only a matter for the petitioner, but it is a matter for the rights of the entire constituency. Also, the judge said that since the petitioner had formally deposited the bail money, the issue of expenses was not acceptable and ordered the petitioners and other documents to file affidavits before April 12, 1948, to verify the three allegations presented in the election petition.

### **14.3. Can the President be made respondent in an election petition?**

*Kumaranatunge v. Jayakody (1984)2 Sri L.R. 45*

#### **Background**

The background of this election petition was the by-election for the Mahara constituency held on 18 May 1983. Vijaya Kumaratunga, the petitioner in this petition and 1st respondent, Kamalavarna Jayakodi and three others contested this by-election. According to the election results, Kamalavarna Jayakodi, who contested representing the United National Party, received 24944 votes, and Vijaya Kumaratunga, who contested for the Sri Lanka Freedom Party, received 24899 votes. Accordingly, Jayakodi, who received 45 more votes, was appointed as a Member of Parliament. Vijaya Kumarathunga, who is filing an election petition in the Court of Appeal, claimed that his votes were reduced due to the false statements by President JR Jayawardena, who acted as an agent of the 1st respondent with the intention of influencing his personal character and conduct during the election campaign and thus to declare the membership of Jayakodi void.

#### **Election Petition**

The petition filed on June 9, 1983, named the winning candidate Kamalavarna Jayakodi as the 1st respondent and President J. R. Jayawardena was also named as the second respondent.

Accordingly, the second respondent, acting as an agent of the first respondent, made false statements about the personal character and conduct of the petitioner in the said election in terms of section 58(d) read with section 77(c) of the Ceylon (Parliamentary Elections) Order-in-Council 1946, with the aim of adversely affecting the election of the petitioner. The petitioner requested the

court to annul the appointment of the 1st respondent on the ground of committing corruption by issuing statements harming the conduct and the character of the petitioner.

### **Hearing of election petitions**

Justice HD Thambaiah of the Court of Appeal heard the petition. The petition presented several statements made by the 2nd respondent during the election campaign of the 1st respondent. Accordingly, he said that during a campaign meeting held in the Malvatuhiripitiya Narammala area on May 8, 1983, 2nd respondent said that “some members of the opposition party who were planning to cause disturbances in various parts of the country after the presidential election and the referendum were arrested, and they had full knowledge of that, and Tiral Gunathilake was assigned to conduct investigations in this regard, and for Naxalite members, even if they are released, they will be punished according to the investigation report on the 21<sup>st</sup> “. Also, Vijayakumaratunga was not only arrested there but was also a person to whom mobility restrictions were imposed, and it has been stated that the people of this constituency will be isolated if they vote for Vijayakumaratunga.” Also, on another occasion, the 2nd respondent stated that a group of people would kill him; according to the investigations, Vijayakumaratunga was arrested, and before the 21st, the investigation report will be obtained, and the accused will be prosecuted.

At the commencement of the hearing of this petition, four preliminary objections were filed on behalf of the respondents. Those include;

1. Since the 2nd respondent is the President of the Democratic Socialist Republic of Sri Lanka and has presidential immunity, this petition implicates him as a respondent, and thus, the petition cannot be heard.

2. Security deposit has not been deposited in accordance with the provisions of the Act.
3. No affidavits have been filed to confirm the corruption mentioned in the petition.
4. The statements made by the 2nd respondent in the petition do not amount to acts of corruption in terms of Section 58(1) of the Ceylon (Parliamentary Elections) Order-in-Council, 1946.

The petitioner's counsel accepted that the second respondent is the President of the Democratic Socialist Republic of Sri Lanka at all times relevant to this petition.

It was also revealed during the petition hearing that bail money was deposited with the Election Commissioner on three occasions.

### **The decision of the Election Judge**

On March 15, 1984, Judge Tambaiah gave his decision. He declared that the facts mentioned in the constitution were very clear with no confusion. Also, the President has immunity except in cases specified in Article 35(3). Therefore, the fact that immunity may be used incorrectly is completely irrelevant.

Also, he further stated that the only charge, in this case, was regarding a false statement made by the President. Therefore, it was stated that if the allegation is invalid, there is no more election petition to be heard, and that petition should be dismissed accordingly.

Also, the judge who commented on the inaccuracy of the statements stated that those statements might be considered as not constituting a false statement regarding the candidate's character or conduct. Also, on the basis of the above facts and on the fact that affidavits have not been submitted to confirm the acts of corruption

described in the petition, the petition was dismissed, allowing the preliminary objections of the respondents.

**14.4 A decision by a counting officer as to whether or not to reject a ballot shall not be challenged in an election petition.**

*Weerasinghe v. Chandananda De Silva, Commissioner of Elections and Others [1992] 1 Sri L.R. 76*

**Background**

In the parliamentary elections held on February 15, 1989, 9 people contested, including HM Weerasinghe, T.A.K. Thevarapperuma, according to the election results, one parliamentary seat was allotted to Sri Lanka Freedom Party from Digamadulla Constituency, and Thevarapperuma who got 21751 preferential votes was elected as a Member of Parliament. According to the election results, 21675 preferential votes were obtained for HM Weerasinghe. HM Weerasinghe filed an election petition alleging injustice in the counting of votes.

**Election Petition**

The petitioner and the 32nd respondent, Thevarapperuma, of this petition contested for the Digamudulla constituency and the petitioner's preference number was 9. The petitioner stated that the only member of parliament that the Sri Lanka Freedom Party got, according to the election result, was the 32nd respondent, who obtained 76 preference votes over him. There were two charges raised by the petitioner.

The first allegation was that 642 ballot papers with their preference number at the end of the ballot paper and the number 9 in front of it (away from the box) were marked as invalid preferences were removed, while in relation to

the 11th respondent, in the empty area of the ballot paper close to number 9 and marked as x of the ballot papers were added as his preferences.

The second allegation was that more than 1000 preferential votes not belonging to the 32nd respondent were included in the tallying records of the 32nd respondent at counting centres No. 13 and 15 due to the irregularities of the counting officers.

On these grounds, the petitioner, who requested that the 32nd respondent's parliamentary seat be abolished and that he be declared as the duly elected member of parliament, for that purpose, the ballot papers and analysis papers should be inspected and preferential votes received by Sri Lanka Freedom Party to be recounted under section 63(2) of the Parliamentary Elections Act, and to that end, the petition was forwarded to the Court of Appeal.

### **Decision on the election petition**

The Appellate Court heard the election petition and rejected all the claims.

### **Appeal to the Supreme Court**

Dissatisfied with the decision of the Court of Appeal, the petitioner appealed against that decision to the Supreme Court. The Supreme Court Justices Bandaranayake, HAG de Silva and Kulatunga heard the appeal.

### **Determination of Supreme Court**

The decision of the bench that heard the appeal was a split decision Justice De Silva agreed with the decision of Justice Bandaranayake, and Judge Kulatunga gave a decision with a different position.



Accordingly, on September 10, 1990, Justice Bandaranaike, with Justice Silva concurring, announced the decision of the majority in this appeal.

There, the judge stated that section 39(1) of the Act states that the preference votes should be marked by an X mark on the preferential number on a ballot paper prepared according to the format mentioned in the Third Schedule of the Parliamentary Elections Act. That an X mark marked elsewhere cannot be accepted as a preferential vote to which the petitioner is entitled, and accordingly, the said preferential marking should not be counted. Also, in the second allegation, the 47th respondent entered the ballot papers marked in favour of more than 1000 other persons in the counting centres number 13 and 15 in the analysis documents in favour of the 32nd respondent, the judge stated in his decision. According to section 98(c) of the Election Act, the judge emphasized that a brief statement about the crucial facts relied on by the petitioner should be included in the election petition, but the petitioner has failed to mention the relevant facts sufficiently in the said election petition. Also, Section 53(9) of the Election Act provides that the decision of the Counting Officer shall be final and conclusive in relation to any question arising in respect of any ballot paper, and Section 112 of the Election Act states whether or not a ballot paper should be rejected under Section 53 by the Counting Officer. Emphasizing here that the decision made by a counting official should not be debated in an election petition, it was emphasized that according to those provisions, a recount is not expected to be prescribed under those articles. Accordingly, the appeal was rejected, confirming the decision of the election judge.

## **Results of the appeal decision**

According to the decision of the Supreme Court, T. A. K. Thevarapperuma's parliamentary seat was protected, and he held his position until the end of the ninth parliament.

### **14.5. Request for a recount of preferential votes**

*Pelendagama v. Commissioner of Elections and Others*  
(2001) 2 Sri L.R. 215

#### **Background**

The background to this election petition was the Sambaragamuwa Provincial Council election held on April 4, 1999. The petitioner was a candidate of the Ratnapura district group of the People's Alliance for this election. According to the results of the election, he was not entitled to a provincial council seat, and the election petition was submitted alleging that the counting officers used their discretion arbitrarily.

#### **Election Petition**

The Election Commissioner, the District Returning Officer of Ratnapura, the counting officers of the 52 counting stations, the candidates who were elected and the candidates who were not elected were named as respondents in this petition.

It was stated that respondents from 5 to 56, the counting officers, failed to use their discretion properly in counting the preferential votes belonging to the petitioner, and the petitioner alleged that they used their power maliciously and arbitrarily and accordingly, as per provisions of sections 57(7), 51(11), 53(a) and 58(1)(a) of the Provincial Councils Election Act No. 2 of 1988, alleged that there was no free and fair election in respect of the petitioner

and the following relief was sought from the Court of Appeal.

- ❖ To issue an order to carry out a recount of the preferential votes given to the PA candidate list
- ❖ Re-examining the above preferences and
- ❖ That the petitioner be declared a duly elected candidate

### **Petition hearing**

Justice Wigneswaran of the Court of Appeal heard the petition. At the very beginning of the hearing of the petition, the counsels for respondents 1 to 4 raised a preliminary objection. That is,

(a) The relief that can be sought under the Provincial Councils Elections Act is to seek annulment of the election result of the district and therefore seeking to declare that the petitioner has been elected in place of any of the selected candidates (respondents 57 to 67) is not prima facie a right to seek relief.

(b) Under Section 96 of the Provincial Councils Election Act No. 2 of 1988, it does not refer to a re-count under the relief that can be requested in an election petition.

(c) According to the Election Petition Rule 10 of the Provincial Councils Elections Act No. 2 of 1998, the election petition notice was not delivered to the respondents within ten days.

(d) The petitioner has failed to add all the candidates of the political parties and independent groups who contested the election to the petition as respondents in terms of section 97 (1) (a) of the Provincial Councils Elections Act No. 2 of 1988.

Counsel for respondents 1 to 4 urged the court to dismiss the petition without hearing it on these preliminary objections.

## **Court of Appeal decision**

Justice Wigneswaran delivered his decision on December 13, 2000. Accordingly, the petition was dismissed, accepting A and B objections raised by the respondents and rejecting objections C and D.

### **14.6. Delivery of notice within ten days is mandatory.**

*Hafi v Dayananda Dissanayake, Commissioner of Elections & others (2003) 3 Sri L.R 81*

## **Background**

The background to this election petition was the parliamentary election held on December 5, 2001. The petitioner contested from the United National Party candidate list for the Puttalam district. In this election, the petitioner did not elect to the Parliament and filed an election petition saying that he lost the opportunity to go to the Parliament because the Puttalam District Returning Officer supported another candidate.

## **Election Petition**

In this election petition, the Election Commissioner and the Puttalam District Returning Officer were 1st and 2nd as respondents, while 3, 5, 7, and 9 were the MPs elected to Parliament from Puttalam district contesting from the United National Party and the candidates who contested from all political parties and independent groups for that election were also named as respondents.

In his petition, the complainant alleged that he obtained 35634 preferential votes, but the 3rd respondent, who obtained 34348 preferential votes, declared that he was elected to the Parliament and especially that the election was not conducted in accordance with Sections 53, 55 and 60 of the Parliamentary Elections Act.

Through the election petition, the petitioner had requested that the result of the election in Puttalam district be annulled, the appointment of the 3rd respondent as a Member of Parliament be annulled and that he be declared duly elected to the Parliament.

### **Hearing of election petitions**

Justice Dissanayake of the Court of Appeal heard the petition. At the outset of the petition, the counsel raised several preliminary objections for the 3rd respondent.

- ❖ Failure to serve a copy of the election petition and a copy of the notice of the petition to the respondents within ten days from the date of filing of the petition in accordance with Election Petition Rule 14
- ❖ The petition was not prepared in accordance with the essential provisions of the Parliamentary Elections Act No. 1 of 1981.

### **Decision on the election petition**

Justice Dissanayake of the Court of Appeal, who heard the petition, announced his decision on July 10, 2003. According to the work notes of the case file, the petition was filed on December 31, 2001. Accordingly, the judge pointed out that according to the work notes, there is no evidence that the notice regarding the election petition was delivered to the respondents. It was mentioned that the court first called the case on 5th March 2002 and issued notice to the 3rd respondent; on examination of the work notes of the case file, the learned counsel for the petitioner filed notices on the petition for the respondents on 11th January 2001, but the 3rd respondent's counsel informed through a motion that he did not receive the notices, on examination, it was found that the 3rd respondent's notice has been sent to a wrong addressed.

Accordingly, delivery of the notice in accordance with Election Petition Rules 14 is a mandatory requirement, allowing the preliminary objection; the election petition was dismissed.

**14.7. The power of the Supreme Court to hear presidential election petitions comes from Article 130 of the Constitution and not from Section 91 of the Presidential Elections Act.**

*Sarath Fonseka v. Mahinda Rajapakse and others (2010)*  
*1 Sri LR. 376*

**Background**

The background for this election petition was the 6th presidential election of Sri Lanka, held on January 26, 2010. In this election, Mahinda Rajapaksa, who competed representing the United People's Freedom Alliance, won, and Sarath Fonseka, who contested for the New Democratic Front, who was a candidate in the presidential election, filed a presidential election petition challenging his appointment as a president.

**Presidential Election Petition**

According to the legal provisions made by Section 94(a) of the Presidential Elections Act No. 15 of 1981, a presidential election petition must be filed with the Supreme Court. Accordingly, in this petition filed on February 16, 2010, 1 to 21 were named as respondents who contested the presidential election. Mahinda Rajapaksa, the winning candidate of the presidential election, was named as the first respondent. The Election Commissioner was named as the 22nd respondent. Respondents 23 to 26 were the persons alleged in the petition to have committed acts of corruption.

Among the facts alleged by the petitioner in this petition, the appointment of a candidate is void under section 91(a) of the Presidential Election Act due to the prevention of the candidate of his choice by treating voters to make the election of the candidate annulled under the provisions of section 91(b) of the Act due to the fact that the election was not conducted in accordance with the prescribed policies as a result of the non-implementation of the legal provisions and the appointment of the candidate be revoked under Section 91(c) of the Act on the ground that the 1st Respondent and his agents have committed corrupt practices under Section 91(c) of the Act were included.

The petition also included a document about bribery, undue influence and violent acts related to the election.

The petition made the following claims;

- ❖ That the appointment of the 1st respondent be void
- ❖ To make a declaration that the petitioner is the duly elected candidate
- ❖ To order the 22nd respondent, the Election Commissioner, to recount the ballot papers used in the election in the presence of the petitioner's representatives
- ❖ To pay the cost of the case

### **Presidential Election Petition Hearing**

Chief Justice JAN de Silva heard the petition, Supreme Court Justices Dr Shirani Bandaranaike, Sripavan, Ratnayake and Imam. The respondents raised the following basic objections at the beginning of the hearing of the petition. Those include;

- ❖ That the relief requested by the petition has been misrepresented in law and that relief cannot be obtained from the court,

- ❖ That the petitioner has failed to add essential stakeholders as respondents,
- ❖ That the petitioner has failed to present the matter in terms of Section 96(c) of the Presidential Elections Act No. 15 of 1981,
- ❖ The petition does not comply with Section 96(d) of Act No. 15 of 1981 and does not describe the corruption or irregularities alleged by the petitioner,

Accordingly, the inquiry regarding the preliminary objections was conducted on September 13, 14 and 15, 2010.

### **Supreme Court decision**

Chief Justice Silva gave his decision on October 29, 2010, with the concurrence of other judges. The Chief Justice stated that the power of the Supreme Court to hear presidential petitions derives from Article 130 of the Constitution and not from Section 91 of the Presidential Elections Act. Also, according to Section 95(1)(b) of the Act, all the parties accused of corruption should be included as respondents in the petition, and the Chief Justice said that Lakhada and Independent Television Network had not been added as respondents. Also, the court stated that under Section 94 of the Act, a recount of votes could only be requested by a defeated candidate who has legally obtained a majority of votes, not a majority of votes.

Thus the petition was dismissed, allowing the preliminary objections of the respondents.





## Chapter Fifteen

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### **Criminal liability in connection with election activities**

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In order to maintain an election process in a formal manner, the respective election acts have introduced certain acts that hinder the said process as criminal offences. Also, some other legislations have also introduced specific actions that interfere with an election as criminal offences. This chapter describes the legal provisions regarding criminal acts related to an election and some of the decisions given by the courts when allegations were made in connection with those criminal acts.

#### **15.1. Election-related activities for which criminal liability is assigned**

In order to conduct a free and fair election, specific actions have been identified as criminal offences in the election rules as well as in the Constitution. Apart from that, other Acts have been identified such acts as criminal offences.

Parliamentary Elections Act of No. 1 of 1981 has identified three types of prohibited acts: offences, Corrupt Acts and Illegal Acts.

Offences under the Act include falsely printing and possessing, purchasing or misappropriating nomination papers and ballot papers without authority, employing persons with civic disabilities for election campaigning, soliciting votes near the polling station on election day or declaring not to vote, display of election symbols in such area, crowding or use of loudspeakers, conducting political demonstrations within a period of up to one week from the date of submission of nominations and the date of release of election results, holding public meetings within 48 hours before the election, preparing

election campaign leaflets without the name of the publisher or printer, running election campaign offices more than the prescribed amount, displaying the image of the candidate or the election symbol in vehicles or in public places, the candidate visiting residences for canvassing, not maintaining secrecy at elections.

Also, the acts of corruption in the Act have been identified as personation, treating with the expectation of getting votes, undue influence and bribery.

Further, contracting to pay fees for the transportation of voters, making an agreement to pay for the display of election campaign leaflets/advertisements, and publishing false reports about candidates in newspapers have been identified as illegal practices.

Similar provisions to this provision are found in the Presidential Elections Act No. 15 of 1981, the Provincial Councils Elections Act No. 2 of 1988 and the Local Authorities Elections Ordinance (Chapter 262). In addition to that, the Constitution states that officials of public corporations or public companies who act against a measure or directive imposed by the Election Commission under Article 104 GG of the Constitution also commit an offence. Also, the offences committed in relation to public property have been identified as criminal offences that obstruct the election process within the meaning of the Act as well as in the Penal Code.

## **15.2. Transportation of voters is not a cognizable offence**

*Jayakody v. Karunanayake, Officer-in-Charge Police Station, Polgahawela and AG (1994) 2 Sri.L.R. 264*

### **Background**

Petitioner Sunil Ranjan Jayakodi represented the Polgahawela Constituency in the United National Party

until December 1988; he had supported another group to contest for the Polgahawela local council Pradeshiya Sabha in the local authorities election held on 11 May 1991. The officer in Charge of Polgahawela police station arrested him for transporting voters on election day. Ranjan Jayakodi had filed a fundamental rights petition stating that the act was a violation of fundamental rights.

### **Fundamental Rights Petition**

The Officer in Charge of Polgahawela police station and the Attorney General were named as respondents in this petition. The petitioner, who alleged that the 1st respondent obstructed him from travelling around the polling area on election day but did not obstruct other political parties, further stated that he was arrested on the charge of transporting voters and kept in custody until the end of the polling. He was arrested without a warrant, and the offence of transporting voters is a non-cognizable offence under the provisions of the Local Authorities Elections Act; therefore, the 1st respondent's actions have violated Articles 12(1), 12(2), 13(1) and 14(1)(c) of the Constitution and thus his fundamental rights guaranteed by the Constitution have been violated.

### **Hearing of the Fundamental Rights Petitions**

The hearing of this petition was held before the Supreme Court Justices Kulatunga, Amarasinghe and Dhiraratne. The petitioner who presented the facts during the hearing of the petition said that the respondent also prevented him from signing the nominations of the independent group in support of him and on the day of the election, while he was travelling with the leader of the independent group to meet the polling agents and counting agents and he was at the house of a person named Buddhadasa, the 1st respondent arrested the leader of the independent group with him in the afternoon at around 1.30 p.m. and then at about 3.30 p.m.

the leader of the Independent Group was released and he was produced before the Magistrate the next day and remanded.

The position of the respondents was that two members of the Independent Group were arrested on the day of nomination signing for an offence under the Motor Vehicle Act and that the petitioner was arrested on information that he was transporting voters on the polling day and the leader of the Independent group was not arrested. The respondents had also submitted the affidavits of three voters to the court.

### **The decision of the Supreme Court**

Justice Kulatunga announced the judgment of the Fundamental Rights Petition on 18 November 1992 with the concurrence of the other two judges. In its decision, the court declared that the petitioner had failed to present evidence that he had been discriminated against, and thus it could not be accepted that the respondent had violated Articles 12(1) and 12(2) of the Constitution. Also, the court stated that the petitioner had failed to certify before the court that the respondent had violated Article 14(1)(c). However, the court accepted that according to 80(a) and 80(c) of the Local Authorities Elections Act, the offense of transporting voters is not an offense that can be arrested without a warrant (cognizable offence), the first respondent made a legal mistake as stated in Article 13(1) (freedom from arbitrary arrest) has been violated by arbitrary arrest. Accordingly, the court ordered the petitioner to be paid 3000 rupees as compensation and 500 rupees as court fees and ordered the government to pay this amount to the petitioner.

### **15.3. There is no misappropriation of public property by using it for general purposes**

*Anusha Pelpita v. AG - Court of Appeal Case No: CA 413-414 2017 -C.A.M.19.11.2020*

#### **Background**

In the presidential election held on January 8, 2015, the incumbent president contested as a candidate. As the election was approaching, Sil Cloth was distributed by the President's Office, and allegations were made that 600 million rupees were spent on it. In this regard, the election observers had complained to the Election Commissioner before the election. In March 2015, PAFFREL filed a fundamental rights case against the misuse of state property during the election, including this incident (SC (FR) 76/2015). The Attorney General had agreed to take action to ensure the submission of relevant Auditor reports.

#### **High Court indictments**

In this regard, the Attorney General indicted the former Director General of the Telecommunications Regulatory Commission, Anusha Palpita and the then President's Secretary, Lalith Weeratunga. The indictments included:

- ❖ Between October 30, 2014, and January 15, 2015, an amount of 600 million belonging to the Telecommunications Regulatory Commission was remitted to an account maintained in the name of the President's Secretary contrary to the provisions of the respect Act and thus committing an offence under section 386 (dishonest misappropriation of property) to be read with Sections 113(b) (Conspiracy) and 102 (Abetment) of the Penal Code.
- ❖ At the same time, the first accused committed an offence under Section 386 of the Penal Code by remitting an amount of 600 million rupees

belonging to the Telecommunications Regulatory Commission to an account maintained in the name of the President's Secretary for a program to distribute Sil Cloth contrary to the provisions of the said Act.

- ❖ Committing an offence under Section 102 and Section 386 of the Penal Code by the second accused at the same time abetting the first accused.

### **High Court hearing**

The last part of this case is numbered No. HC 8086/2015 was heard before Colombo High Court Judge Gihan Kulatunga. During the trial, the prosecution summoned ten witnesses for the prosecution, among them the Chairman of the Election Commission (then Election Commissioner) Mahinda Deshapriya was also included.

The evidence of the defence was concluded with the first accused giving a statement from the accused box and the second accused giving the witness in the witness box.

Later both parties filed written submissions.

### **The decision of the High Court**

At the end of the hearing, High Court Judge Gihan Kulatunga announced his decision on 07 September 2017. In his decision, the judge emphasized that according to the evidence presented in the court, a circular issued by the Election Commissioner has emphasized that subsidized distribution projects should be suspended at no place during the polling period, and only urgent projects that cannot be postponed should be carried out. The judge has also emphasized that this is not an urgent or unforeseeable project of dividing the fabric of Sil Cloth. Also, the provision of this money has been made under the CSR budget heading (Corporate social

responsibility) of the Telecommunication Regulatory Commission, and the amount allocated by the Board of Directors for that budget heading is 100 million, and the amount was already exhausted and six times that amount. The judge also stated that it had been revealed that the first accused had remitted to the account of the President's Secretary at the request of the 2nd accused. Also, the 2nd accused is the President's Secretary and ex-officio Chairman of the Telecommunications Regulatory Commission.

Also, the judge paid attention to the pamphlet that was issued with the Sil Cloth and stated that “by stating that according to the policies of Mahinda Rajapaksa, a righteous country will be established and thus the Sil Cloth is presented as a Dhamma Pandura which was prepared to ensure the sustainable existence and development of the country” there is a violation of the circular of the Election Commissioner. According to the circular, this project should be stopped, but instead of doing so, the judge stated that these activities were carried out on January 5, 2015, and that day was very close to Election Day.

When the judge mentioned that there was no personal use or direct acquisition by the defendants, it was a project that was being treated at an official level illegally during an election. The ruling stated that it is criminal misappropriation under criminal law.

Accordingly, the accused were declared guilty of all three charges. According to the verdict, both were sentenced to 1 1/2 years imprisonment and a fine of one million rupees on conviction of the first charge. For the second charge, 1 1/2 years imprisonment and a fine of five hundred thousand rupees were imposed while 1 1/2 years imprisonment and a fine of one million rupees for each for the third charge.

In addition, the second defendant was also ordered to pay a compensation of 100 million rupees to the



Telecommunication Regulatory Commission as compensation for the damage caused to the Telecommunication Regulatory Commission due to their activities.

### **Appeal**

Lalith Weeratunga and Anusha Palpita filed an appeal to the Court of Appeal against this decision of the High Court. It was numbered No. CA 413-414 of 2017, and this appeal was heard before the Appellate Judges Kumuduni Wickramasinghe and Devika Abeyratne.

With the concurrence of Justice Abeyratne, Justice Kumuduni Wickramasinghe announced the appeal decision on November 19, 2020.

The court stated that under the Telecommunications Regulatory Commission Act, the spending of money by the commission to spend on the distribution of Sil Cloth is an expenditure that can be approved. Also, the court emphasized that evidence has been given in the High Court that the Sil Cloth distribution project is a project that has been planned since March 2014. Also, according to Section 386 of the Penal Code, in order to commit the offence of dishonestly misappropriating property, the court emphasized that the person who misappropriated a movable property must use it for his own use and that the appellants did not use the relevant money in this incident. Accordingly, the judge accepted the appeal petition stating that these allegations have not been proven beyond a reasonable doubt. Therefore, these two appellants were acquitted.

## Chapter Sixteen

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### **Loss of membership on expulsion from a political party**

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With the change in the voting system from the First-Past-The-Post system to the proportional representation system, a problem has arisen as to whether the candidate or the party is dominant in an election. However, in the current election system, the political party or independent group is the first choice. The candidate concerned will be selected second. Although it is possible to vote for a party without a candidate in the current voting system, it is not possible to vote for a candidate without voting for a party. Therefore, an elected candidate has a great bond with the party or independent group from which he was elected. This chapter describes the existing legal provisions regarding the removal of members of parliament by expulsion from the party and the court decisions of several court actions taken by the MPs who challenged the decisions of expulsion from the party.

#### **16.1. Legal status related to MP in case of expulsion from a political party**

With the introduction of the 1977 Constitution, there was a change in the electoral system. Accordingly, the proportional election system was introduced instead of the First-Past-The-Post system that existed until then. A new Parliamentary Elections Act was passed to comply with the Constitution, and the Elections of Local Authorities Ordinance, which existed until then, was also amended. At the same time, as the Presidential Elections Act and the Provincial Councils Elections Act were drafted, they were made to integrate the proportional system.

Accordingly, a voter first votes for the relevant political party. Therefore, the political party gets a lot of power

under this electoral system. Accordingly, a member of parliament holds only until the membership of the political party / independent group exists. If the membership of the political party/independent group is withdrawn or expelled, the membership will also be cancelled.

In this regard, Article 99(13) (a) states that,

“Where a Member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of a recognized political party or independent group on whose nomination paper (hereinafter referred to as the “relevant nomination paper”) his name appeared at the time of his becoming such Member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member:

Provided that in the case of the expulsion of a Member of Parliament, his seat shall not become vacant if prior to the expiration of the said period of one month, he applies to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. Three Judges of the Supreme Court shall inquire about such a petition and shall make their determination within two months of the filing of such petition. Where the Supreme Court determines that the expulsion was valid, the vacancy shall occur from the date of such determination.” Thus, the constitution allows the Supreme Court to decide on removing a member of parliament from a party.

**16.2. Expulsion from the party is legal according to disciplinary decisions in accordance with the party constitution.**

*Gamini Dissanayake v. M. C. M. Kaleel and Others*  
(1993) 2 Sri L.R. 135.

**Background**

In August 1991, a group of Parliamentarians brought a motion of impeachment against the President under Article 38 (2) (a) of the Constitution. After August 28, 1991, it was stated that some MPs did not sign the impeachment. Accordingly, the Speaker rejected the impeachment's acceptance on the grounds that the signatures thereof were insufficient.

On August 30, 1998, the President prorogued the parliament. Accordingly, the date of commencing the house was 9th June 1991. During this period, groups, including the petitioner, held many public meetings. In those meetings, comments were made about the President's activities and the abolition of the Executive Presidency.

However, on bringing the impeachment, arrangements were made in the United National Party to ban the party membership of 8 MPs, including State Minister Gamini Dissanayake, Cabinet Ministers Lalith Athulathmudali and Premachandra.

On June 5, 1991, the petitioner, Gamini Dissanayake, filed a case in the Colombo District Court seeking an injunction to prevent him from being removed from the United National Party. On June 6, 1991, the Colombo District Court rejected the request. Even before the petitioner went to the Court of Appeal against the decision, the working committee of the United National Party, which met on the same evening, passed the

resolution to expel 8 MPs, including the petitioner, from the party.

The members of Parliament were Lalith Athulathmudali (Colombo District), Premaratne Gunasekara (Colombo District), Gamini Dissanayake (Nuwara Eliya District), GM Premachandra (Kurunegala District), Samaraweera Weeravanni (Badulla District), Lakshman Seneviratne (Badulla District), Chandra Gankanda (Ratnapura District), Vincent Perera (Kegalla District).

According to the United National Party Constitution, the President is ex officio, the party chairman. All those who contested from the United National Party and became members of parliament are bound to follow the constitution of the party. Accordingly, it was included in the resolution that the group was removed from the party on the charge of working together with the opposition MPs to oust the leader of the party who was legally elected to the presidency.

The proposal also included an allegation against the two cabinet ministers, Lalith Athulathmudali and Premachandra, for misleading the cabinet during the cabinet meeting held on 28 August 1991.

According to the proposal to expel from the party, which included nine such accusations, the party membership of these eight persons was banned from September 6, 1991. The resolution was approved by 2500 members of the National Executive Council of the party, which met on 7th September 1991 at around 7.30 pm. Later, the notice was given to the 8 MPs that they were removed from the party. The General Secretary of the party forwarded to the Secretary General of the Parliament on September 9, 1991, that the 8 MPs were removed from the party according to that proposal.

Parliament reconvened on 24 September 1991. On October 8, the Speaker announced that the impeachment

delivered on August 4, 1991, would be rejected because it did not have enough signatures to be heard.

### **Supreme Court Special Appeal**

Using the provisions of Article 99(13) (a) of the Constitution, appeal petitions were filed in the Supreme Court by the 8 MPs, including Gamini Dissanayake, who was removed from the United National Party. Among the facts they stated in these petitions, they stated that the Colombo District Judge was biased, and the United National Party's working committee revoked their party membership in violation of the principles of natural justice.

### **Supreme Court Appeal Hearing**

All these eight appeal petitions were heard together in the Supreme Court. The appeals were heard by a three-member tribunal of Supreme Court Justice Mark Fernando, Justice Kulathunga and Justice Wadugapitiya.

During the petition hearing, matters were presented regarding the powers given to the party's working committee and the national executive council by the party constitution of the United National Party and especially the powers to remove a party member. Also, under the proportional representation system, matters related to the control over a member of parliament to the political party to which he was elected were discussed.

### **Supreme Court decision**

At the end of this hearing of the said petition, the decision of the court was given on December 3, 1991. Accordingly, at the end of this hearing, Justice Mark Fernando issued one decision, and Justice Kulathunga issued another decision. Justice Fernando, by his decision, decided to accept petitions No. 5 and No. 8 and to reject the other petitions, and by the decision of Justice Kulathunga, it was decided to reject all the petitions. Judge Vadugapitiya

agreed with the decision of Justice Kulatunga. Accordingly, all the petitions were dismissed.

### **The outcome of the Supreme Court decision**

According to the result of the Supreme Court decision, the seats of the respective members of parliament were abolished. Later, eight new members were appointed in place of those members by the Election Commissioner's Special Gazette No. 691/10 dated 5th December 1991.

The new MPs who were appointed were Hudson Samarasinghe (Colombo district-replacing Lalith Athalamudali), Srinath Lalaka Kumarasinghe (Colombo district- replacing Premaratne Gunasekara), Muthu Sivalingam (Nuwaraeliya district-replacing Gamini Dissanayake), RMRC Bandara (Kurunegala District- in place of GM Premachandra), RM Appuhami (Badulla District- in place of Samaraweera Veeravanni), Tiran Sennan (Badulla District- in place of Lakshman Seneviratne), HM Upananda Silva (Ratnapura District- in place of Chandragankanda), Shirley Mahinda Seneviratne (Kegalla District- in place of Vincent Perera) (Election Commissioner's Governance Report for the year 1991. 1992. Colombo. 28)

### **16.3 Expulsion from the Party without conducting a disciplinary investigation is not legal.**

*Sarath Amunugama and Others V. Karu Jayasuriya, Chairman, United National Party and Others (2002) 1 Sri L.R. 26*

#### **Background**

The petitioners Sarath Amunugama, Nanda Mathew, Wijepala Mendis, Susil Munasinghe and Chula Bandara were MPs representing the United National Party. On November 8, 1999, the Secretary General of the United National Party addressed a letter to them and said that at the party working committee held on October 21, 1999, the party decided to present party leader Ranil Wickramasinghe as a candidate for this year's presidential election, and on October 31, all MPs were informed about it. It is the United National Party's statement that in the party working committee held on the morning of November 8, 1999; you had met and discussed with the incumbent president, who is contesting against Ranil Wickremesinghe for the presidency without the prior permission of the party, on November 5, 1999, and promised to support her in the presidential election. It has also been informed that the working committee has decided to cancel the membership of the party as it is a serious violation of the constitution. The petitioners submitted a petition to the Supreme Court against this decision of the Party General Secretary.

#### **Special request of the Supreme Court**

Four petitioners filed four petitions on 5th December 1999 against their removal by the party under Article 93(13)(a) of the Constitution, and the 5th petitioner filed his petition on 7th December. In the petitions, they claimed that the decision of the United National Party to



revoke their party membership was invalid, and the decision of the Working Committee of the United National Party had no legal effect and asked the court to declare that they were still members of the United National Party.

### **Petition hearing**

All these five petitions were heard together. Acting Chief Justice Amarasinghe, Justice Bandaranayake and Justice Smile heard these petitions.

Among the allegations against the petitioners regarding their removal from the membership of the United National Party, the main charges were that they issued statements to the media regarding the formation of a national government without the consent of the party and that they announced to the BBC that they would leave the party if the United National Party failed to respond to their concept of a national government.

The fact that petitioners emphasized to the court that the process was not done properly in reaching the decision of the United National Party to revoke their membership, and the principle of fair hearing to both sides was violated. Also, the respondents submitted the following facts to substantiate that the relevant decision was unfair;

- ❖ According to the party constitution, the party working committee should appoint a disciplinary committee and investigate undisciplined behaviour.
- ❖ No such disciplinary inquiry is known to have been conducted against the petitioners
- ❖ Petitioners have not been called upon to tender any excuse
- ❖ No charge sheet has been presented
- ❖ The petitioners have not been notified of a date and time of a disciplinary inquiry
- ❖ No disciplinary inquiry was conducted against the petitioners.

### **The decision of the Supreme Court**

Acting Chief Justice Amarasinghe gave the decision of the petition hearing on February 3, 2000, with the concurrence of the other judges. The judge stated that according to the party constitution, it is mandatory to appoint a disciplinary investigation committee by the party working committee, and it has not been done. Also, the respondents have failed to convince the court that banning this party membership is not a general need but an urgent action. Accordingly, as the respondents did not justify the failure to observe the principles of natural justice and conduct an investigation before the dismissal of the petitioners, the dismissal is also null and void.

Accordingly, in terms of the operation of Article 99(13)(a) of the Constitution, it was decided by the judge that the decision of the party to expel the five petitioners from the United National Party shall be annulled.

### **16.4 Expulsion from the party by disciplinary inquiry in violation of the principles of natural justice is not lawful.**

*Rambukwella v United National Party and others*  
(2007) 2 Sri L.R. 329

### **Background**

The petitioner was a Member of Parliament who represented the United National Party and was elected from the Kandy district in the parliamentary elections held in 2000, 2001 and 2004. The petitioner addressed a meeting of the party central committee in the Kandy district on January 13, 2006. There were about 400 members of parliament, including provincial council members attended the said meeting. The petitioner chaired the said meeting. Addressing the meeting, the petitioner has stated that in order to defeat terrorism,

support should be given to the President without party differences at this challenging time.

On January 16, 2006, the petitioner received a letter from the President. In one of the letters, the petitioner mentioned the statement made in Kandy and noted that he hoped for support by getting rid of the party obstacles. The letter ended with an invitation to accept a ministerial post. Accordingly, on January 25, 2006, the petitioner was sworn in as the Minister for Policy Development and Implementation. In addition, he was appointed as the National Security Media Spokesman of the government.

On August 6, 2006, a letter was received from the General Secretary of the party stating that the petitioner had been removed from the party, and on the same day, the General Secretary of the Party also informed the Parliamentary Secretary that he had been removed from the party.

The petitioner filed a petition in the Supreme Court under Article 99(13(a)) of the Constitution, seeking annulment of the decision to expel him from the party.

### **Supreme Court Petition**

It was stated that the petitioner represented the Democratic United National Front (DUNF) party in 1992, contested for the Central Provincial Council in 1992 and held a ministerial position. It was also stated that in the years 2000, 2001 and 2004, he contested for the Kandy district under the United National Party list and entered the Parliament with a large number of votes. It was stated that the UNP candidate had also received a ministerial position after a statement made in Kandy by the President who had invited him to accept a ministerial position, and after that, a person sent a letter to the UNP headquarters requesting that the UNP conduct a disciplinary investigation against him. It was also stated that the party's constitution had been clearly violated by

contesting from the United National Party list, entering the parliament, and assuming a ministerial position. In March 2006, the petitioner was informed by the chairman of the said investigation board that a three-member investigation panel was appointed to conduct a disciplinary investigation against the petitioner at the request of a certain person. In response to that letter, the petitioner has requested the relevant charge sheet and the letter of appointment of the board of inquiry.

The petitioner was directed to appear before the Disciplinary Inquiry Board on 5 July 2006. In a letter dated July 1, the petitioner sought adjournment of the inquiry, which was then fixed for July 28. It was stated in that letter that there is no room for a lawyer to appear. The petitioner informed in a letter dated July 27 that he will not participate in the investigation as it is not fair and a violation of the party constitution to order him to appear in an investigation without the assistance of a lawyer. On August 10, the party's working committee informed the petitioner that, as per the disciplinary committee report, the petitioner had been found guilty and his party membership would be revoked.

Accordingly, the party's General Secretary has also made this notice to the Parliamentary General Secretary. The petitioner filed the petition stating that the inquiry to expel him from the party was not fair.

### **Petition hearing**

The petition was heard by Chief Justice Sarath Nanda Silva and Supreme Court Justices Jayasinghe and Dissanayake. During the petition hearing, the petitioner presented the following facts before the court to confirm that the party's decision was not legal.

- ❖ According to the party constitution, disciplinary action should be taken by the party's National

Executive Council and not the party's working committee,

- ❖ The Disciplinary Inquiry Committee has violated the principle of allowing legal assistance in an investigation into an offence.

The respondent argued that membership in a political party is the same as membership in a private organization. Members must be willing to comply with the constitution of the organization, and it is not necessary to use advanced procedures or administrative law in expulsion from membership there is a mandatory contractual and personal legal relationship between the party and the member.

### **Supreme Court decision**

On November 6, 2006, Chief Justice Sarath Nanda Silva gave the decision of the petition hearing on the concurrence of the other two judges. The judge held that the standard of review of a decision to expel should be the same as that applied to the review of the actions of an authority empowered to decide the rights of individuals at common law, and therefore such review would fall within the scope of the administrative law. Also, the judge pointed out that a person has the right to get the services of a lawyer according to section 41(2) of the Judicature Act; the judge has indicated that the principles of natural justice have been violated by denying the petitioner a lawyer's representation in this investigation.

Accordingly, the judge declared in his decision that the decision to expel the petitioner from the party was annulled.

### **16.5 Expulsions made by avoiding the provisions mentioned in the party constitution are not legal**

***Perumpulli Hewage Piyasena v. ITAK Office SC  
Application Special [Expulsion] No. 03/2010 SCM,  
8.2.2011***

**Background**

The petitioner contested and won the Digamadulla Constituency on the nomination list of the Ilankai Tamil Arasu Kachchi (ITAK) Party in the Parliamentary General Elections held in April 2010 and was sworn in as a Member of Parliament. Subsequently, in October 2010, the Government presented the 18th Constitutional Amendment to the Parliament. The petitioner voted for the said Constitutional Amendment.

He was later expelled by the party. A petition was filed in the Supreme Court seeking annulment of the eviction.

**Petition to the Supreme Court**

The petitioner filed this petition seeking annulment of the decision of expulsion from the party under the provisions of Article 99(13) (a) of the Constitution. As respondents in this petition, Ilankai Tamil Arasu Kachchi (ITAK) Party leader R. Sampanthan, the party's general secretary, the acting General Secretary of the parliamentary and the election commissioner were named as respondents from 1 to 5. In the petition filed on 10 December 2010, the petitioner claimed that the Ilankai Tamil Arasu Kachchi (ITAK) Party had revoked his party membership by a letter dated 28 November 2010. The petition stated that the letter signed by the General Secretary of the party had stated that ITAK had unanimously decided to expel the petitioner from the party by the party's disciplinary committee held on November 10, 2010.

Accordingly, the petition requested the court to annul the decision to remove the petitioner from the party.

**Petition hearing**

The Supreme Court Justices President's Counsel Salim Massoof, K Sripavan and RKS Suresh Chandra heard the petition.

At the beginning of the hearing of the petition, the respondents raised a preliminary objection that the petitioner is not entitled to the relief requested by the petition because the petitioner has not disclosed all the facts to the court.

The counsel for the third respondent stated that the petitioner had not presented the facts to the court regarding the responsibilities of the members of parliament as per the constitution of the party.

It was also stated that it was decided to vote against the 18th Constitutional Amendment in the party's parliamentary group meeting held on September 6, 2010.

### **Supreme Court decision**

The decision of the Supreme Court, with the concurrence of the other two justices, was issued on February 8, 2011, by Justice Salim Marsuf. The judge declared that the letter issued by the General Secretary of the party on November 28, 2010, was invalid as the disciplinary investigation committee had not been appointed per the party's constitution. Accordingly, the decision to expel the petitioner from the party was declared null and void.

## **Chapter Seventeen**

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### **Registration of political parties**

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Although there is no legal impediment to the establishment of political parties under the law of Sri Lanka, those political parties receive legal power only after they are recognized as recognized political parties by the Election Commission. The system of recognition of political parties was introduced by the Ceylon Parliamentary Elections (Amendment) Act No. 11 of 1959 (Siriwardena. 2014, 47). Subsequently, the Parliamentary Elections Act No. 1 of 1981 was enacted by repealing certain parts of the Ceylon (Parliamentary Elections) Order-in-Council of 1946 and provisions were made regarding the recognition of political parties.

This chapter describes the legal state of affairs regarding the registration of a political party as a recognized political party and the decisions of several cases assigned by the respective parties in cases where the registration was refused.

#### **17.1. Legal Provisions Regarding Registration of Political Parties**

##### **Existing political parties**

The existing legal provisions relating to the registration of political parties are contained in the Parliamentary Elections Act No. 1 of 1981. Sections 7 to 10 of the Act contain provisions regarding the registration of political parties. These provisions have been amended by the Parliamentary Elections (Amendment) Act No. 58 of 2009. Section 7(2) of the Act states that political parties that, at the commencement of the Act, were considered as recognized political parties under the Ceylon (Parliamentary Elections) Order-in-Council, 1946 shall also be considered as recognized political parties under this Act.



### **Notification for registration of political parties**

Section 7(4) of the Act states that the Election Commission should publish a notice before the 31st of January every year to apply for registration as a recognized political party. The application closing date should also be noted in the notice. However, in the event that the parliament has been dissolved, in the event that a presidential election has been announced, in the event that a provincial council election has been announced, in the event that a local authorities election has been announced or in the event that a referendum has been announced, as per the provisions of Section 7(4), the Election Commission should not issue such a statement. In case such an election is declared in the month of January, the Election Commission shall publish the notice within 30 days from the close of said election.

### **Application for registration**

A political party that is not a recognized political party, in the event that the commission has made an advertisement, must provide the party constitution, a list of the party's office bearers, a copy of the audited statement of accounts and a copy of the current manifesto to the election commission along with its application. Section 7(4)(d) states that every political party should ensure that one or more women officers are included in that party's list to ensure a better representation of women in political parties and politics.

### **An inquiry by the Election Commission**

After receiving the relevant application, if it is recognized as a recognized political party after conducting an inspection by the Election Commission, the Election Commission shall make a provision regarding the recognition of the party as a recognized political party and the approval of the symbol of that party according to

the provisions of the Act. If the said party is not recognized as a recognized political party, then if he is of the opinion that the said party is not a political party and is not organized to contest any election under this Act, then a decision should be made disallowing the request for registration.

### **Factors to the satisfaction of the Commission during the inspection**

Section (5) of the Act states that if the Commission is satisfied with the following points, the Commission shall recognize the party as a recognized political party.

- ❖ If, in the opinion of the Commission, the party is a political party and is capable of contesting elections under this Act.
- ❖ If the Commission is satisfied that the party has been engaged in political activities continuously for a period of at least four years prior to the date of submission of the request.
- ❖ If the Commission is satisfied that at least one of the two candidates nominated by that party has won in the last Parliamentary General Election held prior to the date of submission of the request by that party.
- ❖ If the Commission is satisfied that at least three out of at least five candidates nominated by that party for five different Provincial Councils have won in the last Provincial Councils election held prior to the date of submission of the request by that party.

### **Responsibilities of a recognized political party**

Every recognized political party shall submit the annual audited statement of accounts to the Election Commission. Also, the General Assembly should hold a meeting every year. In the event of an amendment to the

party constitution, the Commission must be notified within 30 days of the amendment.

### **Annual Statement**

The Commission shall, at the beginning of every calendar year, publish in the Gazette a list containing the names of every political party entitled to be treated as a recognized political party for electoral purposes.

### **Initiating Alliances**

Section 8A of the Act provides that it shall be the duty of the Secretary of any alliance formed by the amalgamation of two or more recognized political parties to announce to the Commission the names of the constituent parties and the names of their officer bearers.

### **Termination of recognition of a political party**

Section 9 of the Act states that the recognition of recognized political parties shall be terminated on the following grounds.

- ❖ In the event that a recognized political party does not fulfil the obligations mentioned above in the Act,
- ❖ If at least one candidate of that party is not nominated for two successive Parliamentary General Elections,
- ❖ Failure to submit annual audited accounts to the Commission,
- ❖ Failure to provide the list of office bearers of the party to the Commission,
- ❖ Failure to provide the party Constitution to the Commission.

## **17.2. When recognizing political parties, equals should be treated equally**

*Gooneratne & Others v. Chandranande De Silva, Commissioner of Elections- (1987) 2 Sri L.R 165*

### **Background**

The United Lanka Janata Party was founded on January 2, 1987. A party constitution had been approved, and party membership had exceeded ten thousand. An application was submitted to the Election Commissioner on January 22, 1987, to register this party as a recognized political party under the Parliamentary Elections Act No. 1 of 1981. On February 27, 1987, the Election Commissioner interviewed party officials regarding the party's registration. On March 31, 1987, the Election Commissioner sent the party a letter informing them that it could not be registered as a recognized political party. No reason was given for that. Four party officials filed a Fundamental Rights Petition alleging that the Election Commissioner's decision violated their fundamental rights.

The Supreme Court's decision on this fundamental rights petition comes before Parliament Act No. 1 of 1981 was amended by Amendment No. 58 of 2009. Many decisive amendments regarding the recognition of political parties were made by amendment No. 58 of 2009.

### **Fundamental Rights Petition**

This Fundamental Rights Petition was filed by the four officers of the party, namely the President, Vice-President/Main Organizer, Secretary and Treasurer, as petitioners from 1 to 4, respectively, alleging violation of fundamental rights by refusing to register the United Lanka People's Party as a recognized political party. The Election Commissioner and the Attorney General have been named 1st and 2nd respondents, respectively. The

petition stated that the party was founded as a political party on January 2, 1987, and that the party's constitution was adopted at the inaugural meeting, and office bearers and an executive committee were appointed. The petition also stated that branch societies of the party were established by holding meetings in the local level divisions.

The petition stated that a request was made to the first respondent, the Election Commissioner, on January 31, 1987, for registration as a recognized political party under Section 7(4) of the Parliamentary Elections Act No. 1 of 1981 and with the letter of the request, the ten-year program of the party, the form of the membership application, the form of the party membership card, newspaper advertisements about the party, documents related to a media report published in the Mandras Hindu newspaper about the news of establishing a political party by a nephew of former Prime Minister Dudley Senanayake were also filed. It was mentioned in the application that this party was established according to a resolution adopted in the political organization called the United Lanka People's Assembly, which has been operating since about two years ago. On February 27, 1987, the first respondent, the Election Commissioner, conducted an interview to consider their request, and the petitioners participated in the interview and submitted additional documents, including a list of 7000 members.

Despite this, the first respondent, the Election Commissioner, informed the petitioner on March 31, 1987, that his party could not be accepted as a recognized political party for standing in the election. The petition stated that no reason was given for such rejection.

Also, the petition further stated that the application submitted by the Sri Lanka People's Party, which was founded on January 22, 1984, was accepted by the Election Commissioner on January 30.

Alleging that this decision of the Election Commissioner was unfair, irrational and unreasonable and thus the petitioners requested in their fundamental rights petition that the action of the first respondent violated the fundamental rights mentioned in Article 12 of the Constitution and to issue an order to require the first respondent to accept their application.

### **Hearing of Fundamental Rights Petitions**

Chief Justice Sharwananda and the Supreme Court Justices Vanasundara and Athukorala heard the Fundamental Rights Petition. The affidavit of the first respondent, the Election Commissioner, stated that the United Lanka People's Party is not organized satisfactorily to be recognized as a recognized political party for the purpose of contesting the elections, and it is not organized enough to compete in any election held under the Parliamentary Elections Act. In his affidavit, the Election Commissioner had stated that strength was not confirmed by his investigation. Therefore, it was stated that it could not be considered a recognized political party under Section 7(5) of the Parliamentary Elections Act.

### **The decision of the Supreme Court**

On August 27, 1987, Chief Justice Sharvananda, with the concurrence of the other two judges, announced the decision of the Fundamental Rights Petition.

The Judge pointed out that the Election Commissioner's order is flawed on the basis of the first respondent's misunderstanding of the basic facts regarding the criteria of an organized political party to compete and thus has given undue weight to the issue of the party's age over all the evidence showing that the party intends to remain in the political field. The Chief Justice further stated in his

decision that it is not necessary to be accepted by other political parties to become a recognized political party.

Also, it was pointed out that Article 12 of the Constitution has prevented discrimination. According to that, even though equals should be treated as equals, the People's United Party has been registered without regard to the time when the party was founded. Still, the factor related to the life of the party was raised during the registration of this party, and it has been rejected. Thus, the Chief Justice, who mentioned that two citizens had been treated unequally, pointed out that a public official should not treat two citizens who are in the same position as citizens differently. Accordingly, the Chief Justice decided that the 1st respondent had violated the fundamental right to equality by refusing to register the party as a recognized political party at the request of the petitioners and ordered the 1st respondent to do the necessary work to declare the acceptance of the United Lanka People's Party as a recognized political party under Section 7(7) of the Parliamentary Elections Act.

### **17.3. Decline in membership is not a valid reason to reject the registration.**

*A.S.N. Perera v. Dayananda Dissanayake - Writ Application No 522/2000- C.A.M.22.08.2000*

#### **Background**

National People's Party was launched as a political party on 20 December 1999. A request was made to the Election Commissioner on January 31, 2000, to register the party as a recognized political party. According to that application, party officials participated in an investigation conducted by the Election Commissioner on March 1, 2000. Later on April 28, the Election Commissioner informed in a letter that the Election Commissioner rejected the National People's Party. Party

officials filed a writ petition in the appellate court against the Election Commissioner's decision.

### **Writ Petition**

In this writ petition, in which the General Secretary of the Jathika Janatha Party and two other officials were the petitioners, while the Election Commissioner and the Attorney General were named as the first and second respondents, respectively.

It was stated in the petition that a request to the Election Commissioner, the first respondent, was made about the petitioner's political party stating that it was founded on 20 December, 1999 and approved the party constitution and manifesto on that day and then on 31 January 2000, submitted an application to get it registered as a recognized political party under section 7(4)(a) of the Parliamentary Elections Act. In response to that request, it was stated that the Election Commissioner conducted an investigation into the recognition of the party on March 1, 2000, and after that investigation, on March 24, the Election Commissioner notified in writing that the registration of the party would be rejected. Dissatisfied with that decision, the petitioners sent a letter to the first respondent, the Election Commissioner, on May 10, 2000, to request to explain the reasons for rejecting the registration of their political party as a recognized political party and the procedure followed in deciding whether it has qualified as a recognized political party or not. The petitioners stated in their petition that they sent a letter asking for these clarifications, but the Election Commissioner did not give any response.

Therefore, the petitioners requested in their writ petition that the decision of the Election Commissioner to refuse the registration of the Jathika Janatha Party as a recognized political party is arbitrary, unreasonable and illegal and thus to nullify the said decision.



### **Hearing of writ petition**

Judge JAN de Silva of the Court of Appeal heard the petition. During the hearing of the petition, the first respondent, the Election Commissioner, stated in his affidavit the reasons for rejecting the registration of the Jathika Janatha Party as a recognized political party. Accordingly,

- ❖ Since the party has only 257 members, it could not organise itself to run for an election.
- ❖ Being a party formed as recently as December 1999.
- ❖ The party has not engaged in any political activity at the time of submission of the application.
- ❖ The policy and program of the party had not been presented to the people at the time of submission of the application.
- ❖ At the inquiry held on March 1, the petitioners based the publication on National Solidarity Movement, which is a non-governmental organization rather than a political movement.
- ❖ The other statements produced during the inquiry were the statements published by the first petitioner in the newspapers on a personal basis.
- ❖ The petitioners did not present any evidence during the investigation that there was widespread support for an election.

And thus, based on the factors mentioned above, the Jathika Janatha Party was not being organized to contest an election as a political party.

The first respondent, the Election Commissioner, also admitted in court that the party constitution, policy statement, list of party office bearers and party organizational structure were submitted to the Election Commissioner along with the application form. The petitioners stated before the court that within two months of its inception, the membership had grown to 257 members, and thereafter the membership grew

rapidly and it has grown to 1300; the petitioners further specified that the Election Commissioner had stated during the investigation that it was not necessary to provide those details.

### **Decision on Writ Petition**

At the end of hearing the writ petition, the judge gave his decision on August 22, 2000. One of the reasons given by the Election Commissioner in his affidavit as a reason for rejecting the party registration is that 257 members are not enough to compete in a proportional election across the island. A political party has the right to contest only a few such constituencies as it does not necessarily contest for the entire country, and therefore, it is unfair to reject the registration on such grounds.

Also, as for the matter of the development of members of the party, the judge quoted the statement made by Chief Justice Sharvananda in the case of *Gunaratna v. Election Commissioner* (1987 2 SLR 165) that "membership may change over time and professional groups with experience can quickly build their party as an organized political party in a very short time" and stated that the party in question has a membership of professionals; therefore, it can be well organized in a short period.

Commenting on the reason given by the Election Commissioner that the party has not engaged in active politics, the judge pointed out that "active politics" is not a word with a specific meaning. If it means that this party has not yet been contested in an election, the fact is that a party that has not received endorsement as a recognized political party cannot contest an election under that name.

Accordingly, the judge ordered the first respondent to reconsider the Jathika Janatha Party's application and give a new decision before August 31.

### **Impact of judicial decision**

According to the court order, the Election Commissioner reconsidered the registration request of the Jathika Janatha Party and decided to register it as a recognized political party. Accordingly, the Jathika Janatha Party was recognized as a recognized political party under the symbol of the bulb.

#### **17.4. The Election Commission has the responsibility to give reasons for rejecting the recognition as a political party.**

*Hapuarachchi and Others v. Commissioner of Election and another (2009) I Sri LR. 1*

### **Background**

The first petitioner, Hapuarachchi, is the General Secretary of the United People's Front. The party was founded in 1999, and on October 31, 2007, an application was submitted to the Election Commissioner for registration as a recognized political party. However, the Election Commissioner refused to recognize this party as a recognized political party. The petitioner filed a fundamental rights petition alleging that the Election Commissioner did not give reasonable reasons for the rejection.

### **Fundamental Rights Petition**

The first petitioner alleged in his petition that he founded the United People's Front as a political party in 1999 and held the second annual general assembly in 2000. An application to the Election Commissioner for his party's registration as a recognized political party was submitted on 31 October 2007. The petitioner further stated that the Election Commissioner rejected it and that the fundamental rights guaranteed by Articles 12(1), 12(2)

and 14(1)(c) of the Constitution have been violated by the Commissioner by not giving any reason for the said rejection. The petitioner alleged that the 1st respondent, the Election Commissioner, is responsible for this violation of fundamental rights.

### **Petition hearing**

The Supreme Court Justices Dr Shirani Bandaranayake, Amaratunga and Justice Marsuf heard the fundamental rights Petition. The first petitioner informed the court that his political party has more than 2200 members. It was also stated that according to the application sent on 31st October 2007, the first respondent did not respond. Then, on 14th December 2007, he again requested his party to be registered as a recognized political party. The letter dated 16 January 2008 stated that the petitioner was invited for an investigation to register the party. After that investigation, the Election Commissioner sent a letter on January 21, 2008, saying, "I regret to inform you that your application has been rejected." The petitioner also attached this letter as an annexure to the petition. Accordingly, the petitioner alleged that the relevant letter did not give any reason for rejecting his application.

The petitioner also claimed that during this period, Okkoma Rajawaru Okkoma Wesiyo, Muslim Liberation Front, Nawa Sihala Urumaya, Padmanada Eelam Janata Wiplawakari Vipulanari and TMVP had been registered as recognized political parties by the Election Commissioner.

### **Supreme Court decision**

On March 3, 2009, Justice Dr Shirani Bandaranaike announced the decision of the Fundamental Rights Petition hearing with the concurrence of the other two judges. The judge stated that not being able to know the

reason for the decision affecting the aggrieved person is not only an arbitrary act but also violates the right to equal protection before the law. Therefore, by rejecting the petitioner's application without giving any reason, the equal protection before the law guaranteed by Article 12(1) of the Constitution was violated. It was held that the Election Commissioner had violated the right to equal protection of the law.

Therefore, the judge ruled that the letter rejecting the petitioner's application addressed to the first petitioner by the Election Commissioner was void and ordered the Election Commissioner to reconsider the petitioner's application.

**17.5. Rejection of party registration without conveying reasons is a violation of fundamental rights.**

*Deepthi Kumara Gunaratne & Others v. Dayananda Dissanayake & Others - SC (FR) 56 /2008- S.C.M-19.03.2009*

**Background**

Deepti Kumara Gunaratne, General Secretary of the Sri Lanka Frontline Socialist Party, sent a letter to the Election Commissioner in January 2008 requesting that his political party be registered as a recognized political party under the Parliamentary Elections Act. In a letter dated January 7, 2008, the Election Commissioner informed the party to bring the relevant documents, including the membership list, as the investigation regarding the party's registration will be held on January 17, 2008. The officials of the party have participated in the said investigation, where the Election Commissioner has made inquiries about the members of the party regarding their political affairs and the party's model. On January 21, 2008, the Election Commissioner informed the Party Secretary that the registration of the Frontline Socialist

Party was refused as a recognized political party. The party's general secretary filed a fundamental rights petition alleging that this decision of the Election Commissioner violated his fundamental rights.

### **Fundamental Rights Petition**

Sri Lanka Frontline Socialist Party General Secretary Deepti Kumara Gunaratne and two other party officials submitted the fundamental rights petition to the Supreme Court. The Election Commissioner and the Attorney General were named as the first and second respondents in this petition.

The petition stated that the political party was founded to promote political, economic and cultural education and morality among the people of his party, to protect the fundamental rights and autonomy of citizens, gain political power based on social, economic and cultural equality and promotion of equal opportunities. The petition stated that their party was organized as Group X in 1977, representing a different current in the society and spreading its political ideology in general. The petition also stated that monthly publications named Mathota and London were issued to propagate these political ideologies. The petition also mentioned that books were published and public meetings were organized regarding various social issues, 304 membership applications were issued, and there were about 10000 followers. Also, it was stated that many university students, intellectuals and professionals had been involved in their culture program named "Peradiga Sulanga", and accordingly, an application for registration as a recognized political party under the Parliamentary Elections Act was sent in January 2008, and an investigation was conducted on January 17 based on that application. The petition further stated that the Election Commissioner refused to recognize his party.

Also, the petition pointed out that although the application submitted in January 2008 was rejected by the Election Commissioner, five other political parties were registered as recognized political parties during the said period.

Accordingly, the petition alleged that the rejection of their application was an unreasonable, irrational and arbitrary decision and that the first respondent, Election Commissioner, had violated their fundamental rights enshrined in Articles 12(1), 12(2), 14(1)(a) and 14(1)(c) of the Constitution by this decision.

### **Hearing of Fundamental Rights Petition**

The fundamental rights petition was heard by three Supreme Court judges Shirani Bandaranayake, Nimal Gamini Amaratunga and Shalim Marsuf. The first respondent, the Election Commissioner, presented several facts in his petition to demonstrate the fairness of his decision.

- ❖ That the party is not organized to contest elections.
- ❖ That the various activities carried out by the party are not political activities.
- ❖ The failure of the party to come up for an election and present a practical plan.
- ❖ Lack of evidence of organization to carry out the political activity at the local and provincial level according to the party organization model.
- ❖ No one in the party has supported a party that ran for the elections, and no one has run for an election.

Also, the senior state counsellor who appeared for the first respondent, the Election Commissioner, pointed out before the court that the petitioners have submitted the proposed party constitution with the application and that requirement has not been fulfilled as the party

constitution must be submitted according to the provisions of the 1981 Parliamentary Elections Act. The first respondent admitted that in its letter of rejection of the petitioners' application dated 21 January 2008, no reasons were given for the refusal.

### **Supreme Court Decision**

On March 19, 2009, Supreme Court Justice Shirani Bandaranaike, with the concurrence of other judges, announced the decision of this fundamental rights petition.

Citing a number of precedent cases, the judge stated that the right of the parties to know the reasons that influenced the decision is a part of natural justice. Accordingly, the judge declared that the fundamental rights guaranteed to the petitioners by Article 12(1) of the Constitution had been violated by the first respondent's failure to provide reasons for the rejection made on January 21, 2008, and accordingly annulled the said decision. Through this decision, the court ordered the first respondent to reconsider the request made by the petitioners to register their political party.

### **Impact of the Court Order**

According to the court order, the Election Commissioner reconsidered the registration request of the Sri Lanka Front Line Socialist Party and decided to register it as a recognized political party. Accordingly, the Sri Lanka Front Line Socialist Party was accepted as a recognized political party under the envelope sign. Later, on a request made by the party, the name of the party was amended to Samabima Party in 2021. (Telephone conversation with Deepti Kumara Gunaratne- April 2, 2022)



**17.6. The decision of the Election Commissioner can be questioned in a court of law**

*Jayantha Liyanage v. Election Commission SC Appeal 96/2011 S.C.M. 17.12.2014*

**Background**

Petitioner Jayantha Liyanage was the Secretary of the Sinhala National Front Party. A request was made to the Election Commissioner to register that party as a recognized political party, but on the rejection of that request, a petition was filed with the Court of Appeal seeking a writ against that decision (CA (Writ) Application 448/2008). Due to the rejection of the petition by the Court of Appeal on 7 July 2010, the petitioner appealed to the Supreme Court.

**Writ Petition**

The Election Commissioner was named as the respondent in the Writ Petition No. CA (Writ) Application 448/2008 submitted by the petitioner to the Court of Appeal. The Sinhala National Front as a political party was established in 1999, and an application was submitted to the Election Commissioner on 25 August 2000 to register the party as a recognized political party in accordance with the provisions of the Parliamentary Elections Act, No. 1 of 1981. However, the request was rejected on 25 January 2006. The petitioner stated in his petition that he made a request to the Election Commissioner again on 27 December 2006, and in response to that request, the Election Commissioner's letter dated 27 December 2006 notified the rejection of the request. The petitioner then requested the Election Commissioner to register his party as a recognized political party through a letter dated December 10, 2007, and the said request was rejected by the Election Commissioner's letter dated January 21, 2008. The

petitioner sought the following relief from the Court of Appeal.

- ❖ To issue a writ of certiorari setting aside the letter of the Election Commissioner dated 21 January 2008,
- ❖ To issue a writ of mandamus against the respondent, the Election Commissioner, compelling him to recognize the Sinhala National Party as a recognized political party and to recognize its symbol as the crown.

The petition was dismissed by the Court of Appeal on 2 July 2010.

### **Appeal to the Supreme Court**

- ❖ Dissatisfied with the Court of Appeal decision, the petitioner appealed to the Supreme Court on July 8, 2011. In that appeal, the petitioner raised two basic issues.
- ❖ Did the Appellate Court err in rejecting the petitioner's application challenging the order of the Election Commissioner rejecting the petitioner's application for recognition as a political party when there were sufficient facts before the Election Commissioner?
- ❖ Has the Court of Appeal erred and/or been wrongly guided in concluding the last clause of Section 9(7) of the Parliamentary Elections Act?

### **The decision of the Supreme Court**

Supreme Court Justices K Sripavan, Sisira J de Abreu and Sarath de Abreu heard the appeal. With the concurrence of Judge Sarath de Abreu, on December 17, 2014, Judge Sisira de Abreu announced the decision of the majority while Justice K Sripavan delivered a different decision agreeing to the final conclusion of the other decision.

Judge Sisira de Abreu, in his judgment, first drew attention to the decision of the Court of Appeal that an order made under Section 7 (5) of the Parliamentary Elections Act is conclusive. The judge stated that the existing provision under Section 7 (7) of the Act, "Section (7) (4) an order made by the Commission under sub-section (5) in respect of a request made under the sub-section shall be final and shall not be open to question in any court." Accordingly, the judge pointed out that even if the order is final according to the Interpretation Ordinance, if the principles of natural justice have been violated, the court can question the order. The judge further stated that as the Court of Appeal derives its writ power from Article 140 of the Constitution, the provisions of an Act of Parliament should not be construed to override the provisions of the Constitution. There, the judge also cited the opinion expressed by Judge Dhiraratne in the Supreme Court decision, *B Sirisena Coory Vs Tissa Dias Bandaranayake* [1999] 1SLR 1. Accordingly, the Election Commissioner focused on the reasons given in his objection statement to reject the recognition of this party as a recognized political party. Those reasons are;

1. The fact that the people of the said party have acted independently and not as a party in some cases
2. There has been no increase in membership since 1999, and the petitioner is under the misconception that only a political party can increase its membership.
3. The petitioner has formed an opinion that in order to engage in political activities, his party should be a recognized political party.
4. Although it considers itself a party, only a limited number of people are involved in their activities
5. At no time since 1999 the petitioner's party has never contested an election as an independent party

6. The party of the petitioner is not a breakaway group from a recognized political party

The judge who paid attention to this fact has stated in his judgment that the point made by the Election Commissioner cannot be accepted as a reasonable point for rejecting the recognition of that party as a recognized political party. Also, the judge, paying attention to the 5th point raised by the commissioner, stated that there was evidence that the petitioner had contested the parliamentary elections held in the year 2000 in the Sihala Urumaya party. Also, the judge pointed out that there is no clear provision that it is necessary to have competed for an election to be recognized as a recognized political party by Section 7(5) of the Parliamentary Elections Act and stated that the Court of Appeal had not taken that into account in its decision.

The judge stated in his decision that only two things are required to be recognized as a recognized political party under Section 7(5) of the Parliamentary Elections Act. Those include;

01. The party applying for recognition must be a political party.
02. Such a party must be organized to contest any election to be held under the Act.

It has been submitted that the national organizer of this party ran for the Sambaragamuwa Provincial Council in 2008 under the symbol of Mahajana Eksath Peramuna, and the petitioner contested in the 2000 parliamentary election from the Sihala Urumaya party, and the party supported Dr Harischandra Wijetunga who ran for the 1999 presidential election. The judge decided that the party had fulfilled the requirements in section 7(5) of the Act.

Accordingly, the Supreme Court overturned the decision of the Court of Appeal regarding the letter of the respondent, the Election Commissioner, dated 21 January 2008 and issued a writ of mandamus against the Election Commissioner that the Sinhala National Front Party should be accepted as a recognized political party and the relevant ballot symbol should be accepted.

## Chapter Eighteen

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### Dissolution of Public Agencies

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Parliament, provincial councils and local government bodies are elected by popular vote for a specific period. However, in some cases, there are cases where they are dissolved before the expiry of the specified time prescribed by respective laws. This chapter describes the legality of dissolution before the end of the statutory period and some of the decisive case laws in this regard.

#### 18.1. Legal provisions regarding the dissolution of public agencies

##### Parliament

According to Article 62 of the Constitution, the Parliament is elected by popular vote for a period of five years. It further states that the Parliament cannot be dissolved within a period of one year from the first meeting of the Parliament. Article 70 of the Constitution states that the President has the power to dissolve the Parliament after two and a half years from the first meeting of the Parliament. If the parliament is dissolved before that, a resolution should be passed by a 2/3 majority vote, including the members who were not present in the parliament.

##### Provincial Council

Article 154 of the Constitution states that the term of office of a Provincial Council shall be five years from the first meeting unless dissolved earlier. Also, Article 154(b)(8)(a) of the Constitution states that the Governor has the power to dissolve the Provincial Council. Also, the constitution further states that as long as the Board of Ministers has the support of a majority of members of the

provincial council, the governor must act in accordance with the advice of the Chief Minister in the exercise of these powers.

### **Local authorities**

According to Section 5 of the Pradeshiya Sabha Act No. 15 of 1987, the term of office of a Pradeshiya Sabha is 48 months. Also, the Minister may, by order published in the gazette, curtail the term of office referred to in subsection (1) by appointing, in substitution for the date on which the term of office expires, a day of any month preceding the month on which such term of office expires in that year or in the year immediately preceding that year.

by a gazette notification, make a provision in the year in which the term of office expires or in the year before that, or in any month preceding the month in which the term of office expires, by substituting the date of the end of that term in place of the date of the end of that term. It is also mentioned in that section that it can be received. Also, the said section further states that the 48-month term of office of a local council can be extended to one year by the minister through a gazette notification. Similarly, the term of office of a Pradeshiya Sabha may be extended such term by appointing, in substitution for the date on which the term of office expires under subsection (1) or on the date appointed under paragraph (a) of this subsection, a day of any month after the day on which the term of office expires in that year or in any year subsequent to the year so specified or appointed and thereafter from time to time extend such term by appointing in substitution for the date of expiry of such term specified in the last Order, a later date

Similar provisions are included in Section 10 of the Municipal Councils Ordinance (Chapter 252) and Section 10 of the Town Councils Ordinance (Chapter 255).

**18.2. In dissolving a Provincial Council, the Governor shall act on the advice of the Chief Minister.**

*Maithripala Senanayake, Governor of the North-Central Province and Another v. Gamage Don Mahindasoma and Others (1998) 2 Sri LR. 333*

**Background**

According to the election held on May 17, 1993, for the North Central Provincial Council, the United National Party had 18 MPs, the People's Alliance 11 MPs, the Democratic United National Front 3 MPs and the Muslim Congress one MP. On December 21, 1995, this Provincial Council passed a resolution against the dissolution of the Provincial Council. Also, the Chief Minister had informed the governor in a letter of his opposition to the dissolution of the provincial council. In spite of this, the Governor obtained an order from the President on January 2, 1996, and dissolved the North Central Provincial Council by Extraordinary Gazette No. 904/7 dated January 3, 1996.

According to the election held on May 17, 1993, for the Sambabaragamuwa Provincial Council, the United National Party had 24 MPs, the People's Alliance 14 MPs, the Democratic United National Front 5 MPs, and the Nawa Samasamaja Party had one MP. On December 14, 1995, the Governor sent a letter to the Chief Minister and informed them that the Provincial Council was dissolved and that observations should be made for the same. The Chief Minister responded in a letter on December 19, 1995, and informed that he was against the dissolution of the Provincial Council. In spite of that, the Governor obtained an order from the President on January 2, 1996, and dissolved the North Central Provincial Council by extraordinary gazette number 904/7 on January 3, 1996.

Also, on January 4, 1996, the Election Commissioner announced that nominations would be called from



January 18, 1996, to hold polls for these two provinces through the Extraordinary Gazette No. 904/13.

In this regard, the Chief Ministers of both provinces filed writ petitions before the Court of Appeal requesting the annulment of the decision of the provincial Governors.

### **Writ Petitions**

The case was filed by the Chief Minister of the North Central Provincial Council, Mahindasoma, making Governor Maithripala Senanayake the respondent, and was registered under No. CA writ Application 17/96. The writ request assigned by the Chief Minister of Sambaragamuwa Provincial Council, Jayathilake Podi Nilame, made Governor Saliya Mathew the respondent. It was registered under CA writ Application 18/96 1896.

Both these petitions alleged that the term of office of a Provincial Council is five years and before that time, the Governor has the power to dissolve the Provincial Council only under Article 154B(8)(c) of the Constitution. As long as the majority of members of the Board of Ministers a Provincial Council has the support, the Governor should act in accordance with the instructions of the Chief Minister in the exercise of these powers, and the Governors have acted contrary to the instructions of the Chief Ministers on this occasion.

Accordingly, the petitioners sought the following relief from the court.

- ❖ To issue a writ of certiorari setting aside the order of the Governors to dissolve the provincial councils,
- ❖ To issue a writ of certiorari invalidating the Election Commissioner's decision to call for nominations for the two provincial councils concerned,

- ❖ To issue a writ of prohibition restraining the Election Commissioner from conducting activities related to holding the Provincial Council polls,
- ❖ To issue an interim injunction restraining the Election Commissioner from accepting nominations until the hearing of the petition is over,
- ❖ Court fees are also to be paid.

### **Decision on Interim Restraining Order**

***Mahindasoma V. Hon. Maithripala Senanayake (1996)1 Sri L R 364***

The decision regarding the issuance of the interim restraining order against the Election Commissioner requested by the writ petitions was issued on January 16, 1996, by Justice Dr Ashoka Z. Gunawardena with the concurrence of Justice JAN de Silva. There, the judge mentioned that the Court would be guided inter alia, by the following principles, in

granting interim relief:

- (a) Will the final order be rendered nugatory if the petitioner is successful?
- (b) Where does the balance of convenience lie?

(In other words, the court must be satisfied that the comparative harm, hardship or inconvenience to the applicant by refusing the injunction is more significant than that likely to be caused to the opposing party by granting it.)

Accordingly, the judge issued a restraining order preventing the 2nd respondent, the Election Commissioner, from receiving nominations pending the completion of the hearing of this petition, acting in accordance with Gazette No. 904/13 dated January 4, 1996.

### **Hearing of writ petitions**

Both these writ petitions were considered at the same hearing. The bench consisted of Dr Ashoka de Z. Gunawardena and J. A. N. de Silva, the Court of Appeal judges.

The respondents stated before the court that they had acted for the common good and had acted under Article 154B(2) of the Constitution and that the President had instructed them to dissolve these Provincial Councils on January 2, 1996, and accordingly, as per the President's instructions, under Articles 154B and 154F of the Constitution, the Provincial Councils had been dissolved. Also, the lawyer of the second respondent stated that Article 154B(c) states that the Governor can dissolve the Provincial Council and also that according to Article 154F(2) of the Constitution, the acts of the Governor on the instructions of the President cannot be questioned in court. The counsel for the first respondent in petition 17/96 stated that since the President appoints the Governor in accordance with the powers vested in the President by Article 4 of the Constitution, the Governor is bound to execute the order of the President. It was also argued that according to the words mentioned in Article 154B(8)(d) of the Constitution, it is not mandatory for the Governor to follow the instructions of the Chief Minister.

### **The decision of the Court of Appeal**

***Mahindasoma V. Senanayake and Another (1996) 1 Sri L R 180***

On March 27, 1996, on the concurrence of the Court of Appeal Judge Silva, the decision of this petition hearing was given by the Court of Appeal Judge Dr Ashoka Z. Gunawardena. The Judge basically declared that when examining the content of Articles 154B(8)C and D of the Constitution, as long as there is support from a majority of the members of the Provincial Council for the Chief

Minister, it is mandatory for the Governor to follow the instructions of the Chief Minister for the functions of Article 154B.

Accordingly, the judge stated that since the Governor has an obligation according to the Constitution to act on the instructions of the Chief Minister in relation to the tasks to be done under Article 154B(8)(c), it is not relevant to link Article 154F(2) to this.

Also, the judge stated that executive power is not an unlimited power.

Here, the judge pointed out that there is a limit to the power of the President to dissolve the Parliament under Article 70 of the Constitution.

Accordingly, the judge declared the decisions of the Governors regarding the dissolution of the North Central Provincial Council and Sambaragamuwa Provincial Council to be illegal and invalid and issued a writ of certiorari against the respondents. Also, a writ of prohibition was ordered to prevent the Election Commissioner from conducting the polls and court fees of 5,000 rupees was also ordered to be paid.

Dissatisfied with the decision of the Court of Appeal, the respondents appealed against the decision to the Supreme Court.

### **Appeal to the Supreme Court**

*Maithripala Senanayake, Governor of the North-Central Province and Another v. Gamage Don Mahindasoma and Others (1998) 2 Sri LR. 333*

The appeals made by the respondents to the Supreme Court were registered in the Supreme Court under the numbers SC Appeal no 41/96 and 42/96. Accordingly,

the Supreme Court granted leave to proceed with these petitions to resolve the following legal issues.

- ❖ Is the Governor's power mentioned in 154B(8)(c) of the Constitution considered a discretionary power? And if so, whether that power is required to be exercised under the direction of the President.
- ❖ Whether Article 154B(8)(d) requires the Governor to exercise his powers only as a representative?
- ❖ Are the provisions of Article 154B(9) after Article 154B(8)(d) of the Constitution applicable to that Article?

These appeals were heard by Chief Justice G.P.S. De Silva and Supreme Court Justices Amarasinghe and Ramanathan. On October 14, 1996, with the concurrence of the other judges, Judge Amarasinghe announced the decision of the appeal hearing.

Announcing his decision, the judge stated that the Governor should exercise power to dissolve a Provincial Council under 154b (8) (c) of the Constitution on the advice of the Chief Minister as per Article 154b (8) d). It was stated that 154B(8)(c) gives discretionary powers to the Governor. Still, those powers are linked to the provisions of Article 154B(8)(d), 154B(8)(c) of the Constitution empowers the Governor to dissolve the Provincial Council. It has not been handed over to the President.

Thus, both the appeal petitions were dismissed, confirming the decision of the Court of Appeal.

### **Results of the Supreme Court decision**

According to the decision of the Supreme Court, the dissolution of North Central and Sambaragamuwa Provincial Councils were abolished. The nomination of

the Election Commissioner was also nullified (Election Commissioner's Governance Report for 1996. 1997.5). Accordingly, the term of office of the North Central Provincial Council and Sambaragamuwa Provincial Councils remained the same until June 1995. The next election in those provinces was held on April 6, 1999. (Election Commission's official election results)

**18.3 When the incumbent presidential candidate wins, the term of office starts from the date of release of the election results.**

*Omalle Sobhita Thero v Dayananda Dissanayake and another (2008) 2 Sri L.R 121*

**Background**

Chandrika Bandaranaike became the President in the parliamentary elections held on November 10, 1994. According to Article 31 of the Constitution, her tenure was scheduled to end on November 10, 2000. However, as per the provisions of Article 31(3a)(a)(i) of the Constitution (Notwithstanding anything to the contrary in the preceding provisions of this Chapter, the President may, at any time after the expiration of four years from the commencement of his first term of office, by Proclamation, declare his intention of appealing to the People for a mandate to hold office, by election, for a second term.) It was announced by an extraordinary gazette that Chandrika Bandaranaike would contest the presidential election for her second term, and accordingly, the presidential election of 1999 was held on 21 December. According to the election results released on 22 December 1999, Chandrika Bandaranaike Kumaratunga was elected for a second term.

After the end of President Chandrika Bandaranayake's second presidential term, there was a discussion in society about whether the next presidential election will

be held in 2004 or 2005. The petitioner Omalpe Sobitha Thero made a request in writing to the Election Commissioner, and there was no response to that letter. Accordingly, Omalpe Sobitha Thero filed a fundamental rights case against the Election Commissioner.

### **Fundamental Rights Petition**

The petitioner stated in his petition that he is a member of the parliament of a recognized political party based on Buddhist principles and that nine members, including himself, are represented in the parliament representing this party. The petitioner pointed out that some parties declared that the second term would end in December 2004, and some parties said that the second term would end in December 2005. In order to gain a political position, the petitioner wanted to know the date of the end of the President's second term and the time when an election would be held. Therefore, it was stated that an inquiry was made by letter to the 1st Respondent Election Commissioner in this regard.

However, the petitioner who stated that the Election Commissioner did not respond to the letter, this action of the Election Commissioner, guaranteed by Article 12(1) of the Constitution, that all persons are equal before the law and are entitled to equal protection of the law and the protection of the law is violated, and thus the fundamental rights petition had raised the issue of violation of the said fundamental right.

### **Hearing of Fundamental Rights Petitions**

The Attorney General did not raise any objection to hear this fundamental rights petition which was registered in the Supreme Court under the number SC (FR) 278/2005. As it is an interpretation that is important to the people in relation to Article 31(3a)(d)(i) of the Constitution, the court decided to conduct an urgent hearing under Article

125(1) of the Constitution and accordingly, the parties who requested to be included in this petition were not given the opportunity to be included. However, the Supreme Court decided to give the opportunity to the lawyers of the participating parties to participate in the hearing of the petition.

The petition was heard by Chief Justice Sarath Nanda Silva, along with Supreme Court Justices Sauga Jayasinghe, Udalagama, Dissanayake and Amaratunga.

### **Supreme Court decision**

Chief Justice Sarath Nanda Silva announced the decision of the Fundamental Rights Petition on August 26, 2005, with the concurrence of all the other judges. The court decision basically analyzed the beginning and tenure of the executive presidential system and accordingly pointed out that the second constitutional amendment introduced the executive presidential system to the 1972 republic Constitution on October 20, 1977. Hence, an executive presidency was established by amending Article 5 and Article 20 of the Constitution. Also, according to the new Article 26 of the Constitution, it was pointed out that the Executive President to be elected by the people will be appointed for a period of 6 years; however, the person holding the office of Prime Minister will be the Executive President for the next six years when this amendment comes into effect. Also, the court pointed out that similar provisions were included in the new Republic Constitution of 1978, which came into effect on August 31, 1978. It was pointed out that Article 4 of the new Constitution established a presidency elected by the people, and Article 30(2) provided for the term of office of the President. In this regard, the court pointed out that articles 92, 93 and 94 refer to the election of the president, and it was also pointed out that Article 160 states that the President who was in power until then



will hold office for the next six years from February 4, 1978.

According to the third Amendment to the Constitutional Amendment passed on August 27, 1982, the court pointed out that an amendment was made to the Constitution that after the incumbent president has exceeded four years of his term of office, he has the ability to make a declaration that he will stand for election for the next term. Accordingly, the court pointed out that a presidential election was held on October 20, 1982, and the incumbent president himself was elected.

Commenting on Article 34(4) of the Constitution, the court pointed out that Article 34(2) contains two legal provisions regarding the term of the President. That is, under normal circumstances, the first legal provision is the provision that the term of the president lasts up to 6 years, and the second legal provision is the provision regarding the term of the president who is appointed upon the declaration of the incumbent president for a second term.

The court pointed out that under normal circumstances, the term of office of the president is six years from the date of commencement of office, and when the incumbent president becomes president for the second time, his/her term of office begins from the time the results of the relevant presidential election are announced.

Accordingly, at this particular time, the court pointed out that the second term of President Chandrika Bandanayake would begin on December 22, 1999. Accordingly, it was decided that the second term of the President would end on December 22, 2004.

Accordingly, the court accepted the fundamental rights petition. The first respondent, the Election Commissioner, was also ordered to conduct the

presidential election in accordance with Article 32(3) of the Constitution.

### **Results of the Supreme Court decision**

According to the above decision, the presidential election was held on November 17, 2005, and 13 candidates appeared for that presidential election. According to the election results, Mahinda Rajapaksa, the United People's Freedom Alliance presidential candidate, won and was elected president.

### **18.4 Dissolution of the Provincial Council on the advice of the Chief Minister is legal**

*Rasiah Thurairatnam vs. Mahinda Deshapriya and 7 Others* CA 178/2012 C.A.M. 9.08.2012

### **Background**

The five-year term of the Eastern Provincial Council elected in the Eastern Provincial Council polls held in 2008 was scheduled to end on October 5, 2013. On April 4, 2012, a resolution was passed in the Provincial Council that the Provincial Council should not be dissolved until the term of office of the Provincial Council is over. In spite of this, on 27 June 2012, the Eastern Provincial Council was dissolved by the Eastern Governor through a special gazette notification. The petitioner, who was a member of the Eastern Provincial Council, filed a writ petition in the Court of Appeal demanding the annulment of this order.

### **Writ Petition**

In this writ petition, the Chief Minister of the Eastern Provincial Council, the Provincial Governor, the Eastern Provincial Health Minister, the Eastern Provincial Agriculture Minister, the Eastern Provincial Highways

Minister, the Eastern Provincial Education Minister, the Eastern Provincial Opposition Leader and the Election Commissioner were named as 1st to 8th respondents respectively.

The petitioner alleged that due to the decision of the second respondent, the Governor, to dissolve the Provincial Council, the 8th respondent Election Commissioner is making arrangements to hold a poll for the Eastern Province and that this dissolution is against the Constitution and requested the following reliefs,

- ❖ To issue notices to the respondents,
- ❖ To order an interim injunction to hold the second respondent's order until the hearing of this petition is over;
- ❖ That an interim restraining order be issued against the 8th respondent, the Election Commissioner, to prevent the activities related to the holding of the Eastern Provincial Council polls until the end of this petition.
- ❖ To issue a writ of certiorari quashing the instructions given by the first respondent, the Chief Minister, to the second respondent Minister to dissolve the Provincial Council and/or,
- ❖ To issue a writ of certiorari setting aside the second respondent's decision to dissolve the Eastern Provincial Council and/or
- ❖ To issue a writ of prohibition to prevent the 8th respondent, the Election Commissioner, or his officials from carrying out activities related to the Eastern Provincial Council polls,
- ❖ To issue a writ of certiorari annulling the 8th respondent's decision to hold the Eastern Provincial Council polls,
- ❖ To pay court fees.

## **Hearing of writ petitions**

The Court of Appeal bench of judges Sisira De Abreu, Anil Gunaratne and AWA Salam heard the petition.

The petitioner's lawyer brought the attention of the Court to Article 154F(1) of the Constitution, which states that “there shall be a Board of Ministers with the Chief Minister at the head and not more than four other Ministers to aid and advise the Governor of a Province in the exercise of his functions. In the exercise of his functions, the Governor shall act in accordance with such advice, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.” Accordingly, it was argued that under Article 154B(8)(c) of the Constitution, the Governor should seek advice from the Board of Ministers of the Provincial Council in case of dissolution.

## **Court of Appeal decision**

On August 9, 2012, the decision of the writ petition hearing was announced by the Court of Appeal Judge Sisira De Abreu, with the concurrence of the other judges. Depending on the decision of the Supreme Court in *Maithripala Senanayake, Governor of the North-Central Province and Another v. Gamage Don Mahindasoma and Others* (1998) 2 Sri LR. 333, it was stated that under Article 154B(8) (c) of the Constitution, the Governor had received the instructions of the Chief Minister under Article d of the Constitution, and it is observed that the majority of the Provincial Council supports the Chief Minister and thus the writ application was rejected.

## **Results of the decision of the Court of Appeal**

Acceptance of nominations for the polls for the Eastern Provincial Council was conducted from July 12 to July 19, 2012, and the polls were held on September 8, 2012. The

results of the poll were published in the Extraordinary Gazette No. 1776/7 on 17th September 2012. (The Governance report of the Election Commissioner for the year 2012. 2013.13). Thus, since interim orders were not issued at the beginning of the hearing of the writ petitions, the Election Commissioner conducted the activities related to the polling.

**18.5 Dissolution of Parliament without following the provisions of the Constitution constitutes a violation of fundamental rights.**

*Rajavarothiam Sampanthan v. Attorney General & Others SC FR 351/2018 to 361/2018 SCM 13.12.2018*

**Background**

The inaugural meeting of the 8th Parliament, elected in the parliamentary elections held on August 17, 2015, was held on September 1, 2015, and accordingly, its term of office was scheduled to end on September 1, 2020. According to Article 70(1) of the Constitution, as amended up to the 19th Amendment in effect at that time, the President can dissolve the Parliament at his discretion after four years and six months from the first sitting of the Parliament. Before that, if the President dissolves the Parliament, a resolution must be passed by a two-thirds majority of the Parliament. In spite of this, President Maithripala Sirisena dissolved the Parliament on November 9, 2018, through the Extraordinary Gazette No. 2096/70. Before that, on October 26, the President had removed Ranil Wickremesinghe from the Prime Ministership and appointed Mahinda Rajapaksa, the leader of the opposition, as the Prime Minister through a special gazette. By the same gazette on November 9, the parliamentary election was fixed on January 5, 2019, the acceptance of nominations from November 19, 2018, to November 26, 2018, and the re-convening of Parliament were fixed on January 17, 2019.

Pursuant to this gazette, the Election Commission announced on November 10, 2018, through the Special Gazette No. 2096/73 regarding the deposit of bail money under Section 16 of the Parliamentary Elections Act No. 1 of 1981 and on the same day through the Special Gazette No. 2096/74 Returning officers were also appointed to conduct the parliamentary elections. Also, on November 11, Extraordinary Gazette No. 2096/88 issued orders to prevent the use of the public property for election campaign activities.

Ten fundamental rights applications were filed alleging that the right to equality before the law guaranteed by Article 12(1) of the Constitution was violated by the dissolution of Parliament.

### **Fundamental Rights Petition**

The fundamental rights petitions filed in the Supreme Court were numbered from SC FR 351/2018 to SC FR 361/2018. The petitioners in these petitions were the Leader of the Opposition in Parliament, R Sampanthan, Chairperson and Secretary of the United National Party, Centre for Policy Alternatives, Secretary of the United Left Front, Attorney-at-Law Jayangani Perera, Members of Parliament of Janatha Vimukti Peramuna, Member of Parliament Mano Ganesan, Members of Parliament of All Lanka Makkal Congress, Members of Muslim Congress, Ratnajeevan Hoole, a Commissioner of the Election Commission. In these petitions, the Attorney General was made the respondent in all the petitions, and in some petitions, the Election Commission and its three Commissioners, the Election Commissioner General, the Speaker of the Parliament, the Secretary General of the Parliament, and the President's Secretary were also named as respondents. Professor G. L. Peiris and Udaya Gammanpila, Jagath Sisira Sena de Silva at Wellawatta, Channa Jayasumana, and Premanath C. Dolawatta had also submitted petitions.

As the order issued by the President, through Extraordinary Gazette No. 2096/70 dated November 9, 2018, is contrary to Article 70(1) of the Constitution, petitioners stated that the fundamental right guaranteed by Article 12(1) of the Constitution that all persons are equal before the law and are entitled to the equal protection of the law is violated by the said order.

Some of the petitions have alleged that the freedom of expression guaranteed under Article 14(1)(a) of the Constitution, the right to freedom of peaceful assembly guaranteed under Article 14(1)(b) and the freedom of association guaranteed under Article 14(1)(c) are also violated. The freedom to have or to adopt a religion or belief of his choice guaranteed by Article 10 of the Constitution was also alleged to have been violated. According to the petitions, the following allegations were made regarding the President's order.

- ❖ That the order violated Article 70(1) of the Constitution.
- ❖ An unconstitutional attack on Parliament,
- ❖ An action carried out in excess of the power of the President,
- ❖ Illegal,
- ❖ An attack on the constitutional right of the people,
- ❖ Violation of the sovereign power of the people,
- ❖ Violation of the rights of the petitioners and all Members of Parliament,
- ❖ Arbitrary, irrational, capricious annoying and unreasonable,
- ❖ An act which prejudices and violates the principles of fairness and legitimate expectation and is motivated by improper motives,
- ❖ An order which is illegal and void and without effect in law,

### **Interim restraining order**

The examination of whether the hearing of fundamental rights petitions will be granted leave to proceed was carried out by Chief Justice Naleen Perera, the Supreme Court Justices President's Counsel Priyantha Jayawardena and President's Counsel Prasanna Jayawardena. At the end of the initial investigation, an order was issued on November 13, 2018, and interim orders were issued.

Accordingly, these interim orders prohibit the implementation of the order to dissolve the Parliament published by the President in the Gazette until December 7, 2018.

Also, the court has given time till November 19, 2018, for objections, November 26, 2018, for counter objections and November 26, 2018, for written submissions, and fixed December 4, 5 and 6, 2018, for the hearing.

### **The decision of the Supreme Court**

This fundamental rights petition was examined by the Supreme Court bench of Chief Justice Naleen Perera, justices President's Counsel Buwaneka Aluvihare, Sisira de Abreu, President's Counsel Priyantha Jayawardena, President's Counsel Prasanna Jayawardena, President's Counsel Vijith Malalgoda, President's Counsel Murudu Fernando.

The decision of the Fundamental Rights Petition prepared by the Chief Justice as per the unanimous decision of the Bench was announced on 13th December 2018.

According to Article 70(1) of the Constitution, if the President dissolves the parliament before four and a half years, the judge pointed out that a resolution consensus



must be passed by more than 2/3 of the votes of the parliament. It was held that the relevant order violated the fundamental rights guaranteed by Article 12(1) of the Constitution as no such resolution has been passed in the parliament.

### **Results of the Supreme Court decision**

Parliament reconvened on November 14, 2018, as the order of dissolution of Parliament was suspended until December 17 by an interim order dated November 13, 2018.

After the final decision of the Supreme Court on December 16, 2018, the President's Secretary announced through the Extraordinary Gazette No. 2101/39 that Mahinda Rajapaksa has resigned as Prime Minister effective December 15, 2018. Accordingly, the government led by Mahinda Rajapaksa collapsed in 52 days.

After that, Ranil Wickramasinghe returned as the Prime Minister and a Cabinet of Ministers was also appointed. Accordingly, the 8th Parliament was held until 2020. Gotabaya Rajapaksa of Sri Lanka Podujana Peramuna, who won the presidential election held in 2019, dissolved the Parliament on March 2, 2020, by Extraordinary Gazette No. 2165/8. At that time, four and a half years had passed since the first meeting of the Parliament.

## Chapter Nineteen

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### Judiciary Interventions by PAFFREL

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PAFFREL started as an organization which focuses on election observation, and one of the strategies adopted to contribute to a free and fair election is judicial intervention. Among other measures, judicial assistance is also taken when events that hinder free and fair polls occur and are imminent regarding the nature of regulatory intervention in the PAFFREL organization. This chapter also describes some of the judicial interventions that have been made.

#### 19.1. Nature of judicial intervention of PAFFREL

People's Action for Free and Fair Elections, or PAFFREL, which started as an election monitoring organization, has made many judicial interventions to ensure a free and fair election. Since the protection of citizens' right to vote cannot be guaranteed by mere election observation, judicial interventions are also varied among the multiple efforts made by the PAFFREL.

Fundamental rights petitions and petitions for obtaining writs have mostly been submitted, and judicial interventions have been made in the Supreme Court and the Court of Appeal. In the election petitions related to the local government authorities, relevant interventions have been made in the Provincial High Courts.

In some cases, the PAFFREL has filed lawsuits in the name of the executive director of the organization and in some cases, in the absence of the power to prosecute directly for judicial intervention regarding certain unjust acts, it has selected citizens who wish to file a case among the persons with such power of prosecution and conducted judicial interventions on their behalf. In some

instances, there are cases where PAFFREL has provided legal assistance to citizens who need legal help for judicial interventions.

A summary of these various judicial interventions is described in this chapter. This chapter describes the role of PAFFREL in each of the judicial interventions, and detailed notes related to certain cases have been described in previous chapters.

## **19.2 Mandatory identity card to identify the voter**

### ***PAFFREL & Others v. Dayananda Dissanayake & 2 Others - C.A.No 176/2006 C.A.M. 16.03.2006***

The Elections (Special Provisions) Act No. 14 of 2004 introduced legal provisions mandating a valid identity card to ensure a voter's identity. According to the Act, within one year after the Act comes into effect, the Election Commissioner must ask the Commissioner of Registration of Persons and publish a certificate in the Gazette that all administrative procedures have been taken to issue National ID cards to all voters. The Speaker's certificate for this Act was recorded on November 18, 2004; accordingly, by November 18, 2005, the period to publish the Election Commissioner's certificate in the Gazette ended. However, the Election Commissioner did not publish the said certificate in the Gazette.

In such a situation, the Minister in charge of local government announced on January 16, 2006, through an Extraordinary Gazette that the term of 17 local government institutions would end on April 14, 2006. Also, the term of another 242 local government bodies was scheduled to end on April 16, 2006. The term of office of the other local government institutions was also scheduled to end by June 2006. Accordingly, a local government poll was scheduled, and in that poll, the

Election Commissioner and the Persons Registration Commissioner failed to fulfil the legislative provisions required to make the valid identity card compulsory as per the provisions of Act No. 14 of 2004.

In this situation, Kingsley Rodrigo, the president of PAFFREL, emphasized this situation in a letter to the Election Commissioner on January 10, 2006.

Nevertheless, upon no successful response, a petition was filed in the Court of Appeal seeking a writ of mandamus compelling the Election Commissioner and the Commissioner of Registration of Persons to fulfil their legal obligations under Section 2 of the Elections (Special Provisions) Act No. 14 of 2004.

This petition was filed by the Election Commissioner on March 8, 2006. Clause 7 of the petition stated that alternative measures, such as temporary identification cards, will be issued to voters who do not have a valid identity card as per the above Act. PAFFREL withdrew its petition subject to the agreement, as this action also provides the opportunity to verify the identity of each voter and use the vote.

(For a detailed note on this case, please refer to Chapter Four)

### **19.3 Mandatory identity card to identify the voter for every vote**

*PAFFREL & Rohana Hettiarachchi v. Dayananda Dissanayake & another- C.A (Writ) No.356/2008- C.A.M. 28.04.2008*

The election scheduled after the 2006 local government election was the Eastern Provincial Council poll. The election commissioner announced that the election would be held on March 8, 2008. Dates for receipt of nominations were also announced. However, even at that time, according to Section 2 of the Elections (Special

Provisions) Act No. 14 of 2004, the certificate that the Election Commissioner had completed the administrative work related to the issuance of national identity cards was not published in the Gazette. Therefore, the issue of ensuring the identity cards of the voters in that election was challenged legally.

Rohana Hettiarachchi, the executive director of PAFFREL, wrote a letter to the Election Commissioner on April 2, 2008, asking him to ensure that every voter is given an accepted identity card. However, he did not get any response from the Election Commissioner. Accordingly, a writ petition was filed in the Court of Appeal to issue an order to give a recognized identity card to all the voters appearing for the upcoming Eastern Provincial Council polls. Another relief sought by the petition was to ensure that a valid identity card is provided to every voter for all future elections and also to make it mandatory to present a valid identity card while voting.

This petition was also withdrawn by the PAFFREL as the Election Commissioner gave the undertaking to act as previously consented in paragraph 7 of the submission made by the Election Commissioner for the writ petition 176/2006, which was a prior writ petition to this and according to the said promise of issuing temporary ID cards to the voters who need temporary ID cards under Section 4 of the Elections (Special Provisions) Act No. 14 of 2004.

(For a detailed note on this case, please see Chapter  
Four)

**19.4. Illegal election campaign is a violation of fundamental rights.**

***PAFFREL & Warnakulasooriya Patabedige Wilson V. Dayananda Dissanayake & Others (SC FR 706/2009)***

On August 3, 2009, the Governor of the Southern Province published the announcement of the Provincial Council's dissolution in the Gazette. Accordingly, the Election Commissioner accepted nominations for the Southern Provincial Council polls from August 21st to 28th August. Accordingly, 1090 candidates from 18 political parties submitted their nominations. The Southern Provincial Council polls were scheduled for October 10, 2009. In order to observe the election, the PAFFREL opened observation offices in all constituencies, deployed field observers, and established a good relationship with the Assistant Election Commissioners and police officers. Accordingly, the PAFFREL interim election observation report was handed over to the Deputy Election Commissioner and the Deputy Inspector General of Elections on September 15, 2009.

According to the interim election observation report, the following points were observed in particular.

- ❖ Display of illegal election decorations, poster cut-outs and banners
- ❖ The presence of illegal election campaign offices by election observers

This situation was a violation of Sections 73 and 74 of the Provincial Council Elections Act. Especially in such a situation, the police have the power to remove illegal propaganda material. However, it was observed that authorities are not appropriately taking the action.

Therefore, seeing that the illegal campaign activities prejudice the free and fair nature of the election,

PAFFREL filed a fundamental rights case on September 22, 2009, to prevent such illegal activities. The first petitioner in this fundamental rights petition was PAFFREL, and the second petitioner was W.P. Wilson, a resident of the Hambantota district who was a voter in this election.

The Election Commissioner, District Returning Officers of Galle, Matara and Hambantota districts, the Inspector General of Police, the Secretaries of the political parties that contested the 2009 Southern Provincial Council polls and the Attorney General were named as respondents in this petition.

By filing details and photographs of acts in violation of Sections 73 and 74 of the Provincial Councils Elections Act, the petition sought relief by stating that these illegal acts are obstructing a free and fair election, and for that reason, 12(1) and 12(2), 14(1)(a), 14(1)(e) of the fundamental rights to the petitioners guaranteed in the Constitution are violated.

Accordingly, the petitioners sought from the Court;

- ❖ To issue an interim order to the Election Commissioner, the District Returning Officers and the Inspector General of Police to remove these illegal campaign activities and campaign offices,
- ❖ To issue an interim order be made to the Inspector General of Police to take legal action against candidates and persons who have violated Sections 73 and 74 of the Provincial Councils Elections Act from the date of acceptance of nominations,
- ❖ To issue a cautionary interim order to the Secretaries of all political parties contesting the

election to prevent violation of Sections 73 and 74 of the Provincial Council Elections Act,

- ❖ To make a declaration that illegal campaign activities and illegal election campaign offices are an obstacle to the free and fair Southern Provincial Council polls to be held on October 10.

The petitioners also requested the court to make a declaration that the fundamental rights guaranteed to the petitioners by the provisions of the Constitution have been violated. This fundamental rights petition was heard before the Supreme Court Justices Shirani Thilakawardena and Sripavan.

The Supreme Court informed the Attorney General to submit a report to the Court on the 5th of October 2009 regarding the measures taken to prevent illegal election campaigns in violation of the Provincial Council Elections Act. When the petition was called in court on September 25, 2009, the court instructed the Attorney General to discuss with the election Commissioner, Inspector General of Police and senior police officers of Galle, Matara and Hambanthota districts to prevent illegal election campaign activities.

### **19.5 Regulating the distribution of drought subsidies for Uva Provincial Council elections.**

***Wasantha Jayalath & Others V. Dr Nihal Jayathilake & Others - SCFR/258/2014 SCM:12.09.2014***

Close to the 2014 Uva Provincial Council elections, the Ministry of Economic Development issued circulars to implement a program to pay Rs. 2,500/- each as a drought subsidy to all families in the Monaragala district. However, later, the Election Commissioner told the Ministry of Economic Affairs to stop the distribution of



subsidies until the end of the election as this subsidy program is an obstacle to a free and fair election.

As a result, the distribution of subsidies was stopped, and a group of residents of Monaragala district filed a fundamental rights petition against the Election Commissioner and the Secretary of the Ministry of Economic Affairs as respondents, alleging that their fundamental rights were violated.

A request was made to the Supreme Court on September 15, 2014, to join PAFFREL and its Executive Director Rohana Hettiarachchi as an intervening petitioners for this fundamental rights petition. Through the said petition, the PAFFREL stated that at that time, several districts of the island were affected by drought. According to the official website of the Ministry of Disaster Management, the largest number of families were affected in the Batticaloa district, followed by Polonnaruwa and Hambantota, respectively. Still, the program of distributing 2500 rupees to those districts was not implemented. It was also stated that the Ministry of Disaster Management has no connection with the distribution of these subsidies. Also, it was planned to distribute this subsidy at the village level by Samurdhi Development Officers and Agricultural Research Assistant Officers, and since they are politically biased to the United People's Freedom Alliance, this subsidy program can be used for the electoral advantage of the United People's Freedom Alliance. The petition also stated that the Election Commissioner and the Ministry of Disaster Management, who are essential stakeholders in this petition, have not been named as respondents.

Accordingly, the petition requested the Court to allow PAFFREL to intervene in this petition as an intervening party and that the distribution of subsidies in Monaragala district be postponed until the end of the Uva Provincial Council polls, and that if the distribution

of subsidies is necessary anyway, it should be ordered to be distributed by the Gram Niladharies.

However, the Supreme Court refused to join PAFFREL as an intervening petitioner. Nevertheless, at the end of the petition hearing, the Supreme Court ordered that the subsidy distribution process should be done under the supervision of the Divisional Secretaries and that no political groups should be involved.

(See Chapter Twelve for a detailed explanation of this case)

#### **19.6. Request to take legal action regarding the misuse of public funds in the Presidential Election.**

***PAFFREL v. Election Commission & Others SC (FR) Application No:76/2015***

In the Presidential Election held in January 2015, the incumbent President, Mahinda Rajapaksa, also contested as a presidential candidate. The election observers had reported that the public property was misused for the presidential candidate Mahinda Rajapaksa's election campaign. Especially for the purpose of the election, there were many well-known incidents, such as the distribution of Sil Cloth and the distribution of Liths.

After the election, the Executive Director of a command of the PAFRAL organization PAFFREL filed a fundamental rights case in the Supreme Court seeking legal action against those who misused public funds during the Presidential Election.

Election Commissioner Mahinda Deshapriya, Director General of the Commission to Investigate Allegations of Bribery or Corruption, Director General of Road Development Authority, Secretary of the Ministry of Finance, Inspector General of Police, Auditor General,

Attorney General and Lalith Weeratunga, who was the President's Secretary at the time of the 2015 Presidential Election were named as respondents in this fundamental rights petition.

The petitioner requested the Supreme Court, alleging that the relevant authorities did not take legal action regarding the distribution of silk cloth by spending more than 100 million rupees from public money, the employment of government officials for election campaign activities, the printing and distribution of leaflets promoting the presidential candidate.

- ❖ To issue a declaration that the fundamental rights guaranteed by Article 12(1) of the Constitution have been violated by one or more of the respondents mentioned in the petition,
- ❖ To order the respondents to take criminal disciplinary or other legal measures against the persons who used the public property for campaign activities in the 2015 presidential election.
- ❖ To issue an order to the 1st respondent, the Election Commissioner, to submit a complete record of the events mentioned in the petition to the court.
- ❖ To issue an order to the Director General of the Road Development Authority (4th respondent) and the Director General of the Central Cultural Fund (5th respondent) regarding the relevant incidents,
- ❖ To issue orders to the Secretary of the Ministry of Finance (the 6th respondent) and the Auditor General (the 7th respondent) to assess the loss of the misuse of the public property described in the petition and submit a report to the court.

Accordingly, the petitioner's counsel informed the court that they did not intend to proceed with the case, and the proceedings in the case were terminated.

(See Chapter Twelve for a detailed account of this case)

### **19.7. Petition on Twentieth Constitutional Amendment Bill - 2017**

*People's Action For Free and Fair Elections (PAFFREL) & Rohana Hettiarachchi v. Attorney General- SC SD 22/2017* (19.09.2017 (*Hansard* Vol. 255; No. 01; Col. 1 – 30)

A bill called the 20th Constitution Amendment Bill to amend the Constitution was presented to Parliament by the Prime Minister on August 23, 2017. The draft bill proposed the following changes to the provincial council system.

1. Holding the polls in all the provincial councils on the same day.
2. To take over the power to set the date (fixed date) for the dissolution of provincial councils to the Parliament.
3. Extending the time of some provincial councils in order to disperse the provincial councils on the same day.
4. When a provincial council is dissolved due to any reason, the said provincial council should be governed by the parliament.

By this time, some provincial councils were to end their term of office in 2017, while the term of office of Southern, Western and Uva provincial councils was to end in 2019. Accordingly, there was a risk of Parliament getting

powers to extend the time of other provincial councils until 2019 through this constitutional amendment draft.

PAFFREL and its Executive Director filed a writ petition challenging the constitutionality of the Bill under Article 121 of the Constitution.

In this petition, PAFFREL argued that since this bill is against articles 3, 4, 10, 12 and 14(1) of the Constitution, a 2/3 majority vote and a referendum is required to pass this bill in Parliament. The Supreme Court, which heard 12 petitions, including this petition, had informed the Speaker in its decision that since Sections 2, 3 and 4 of the Bill are contrary to Articles 3, 4, 12(1) and 14(1) of the Constitution, the Parliament should pass the Bill in the same manner that a 2/3 majority vote should pass it and a referendum, including the absent members. Accordingly, the bill was withdrawn by the government.

### **19.8 A fundamental rights petition asking for speeding up local government polls**

*PAFFREL & Rohana Hettiarachchi v. Faiszer Musthapha & 10 Others (SC FR Application No: 249/16 S.C.M. 28.02' 2018)*

Due to the amendments to the Local Government Elections Act in 2012, voting became a mixed system of divisional and proportional representation. Accordingly, it was necessary to delimit the divisions. For that, the Delimitation Committee made a delimitation, and the President published it in the Gazette. Still, due to objections, the Minister appointed a review committee according to the provisions of the Act. However, due to these events, the four-year term of the local government bodies ended. According to the provisions of the respective Acts, the Ministers in charge of the subject extended the period of the local government bodies by one year. As the period of one year also ended, after that,

all the local governments were brought under the control of the Commissioner. In the meantime, nominations were called for by the local government bodies of Muhudubadapattu and Pudukuduiruppu in Mullaitivu district in 2011, and due to various reasons, the voting for those local government bodies was continuously postponed.

Taking these facts into account and by not holding local government polls for a long time, PAFFREL and its executive director Rohana Hettiarachchi filed a Fundamental Rights Petition in 2016 alleging that the basic rights guaranteed by Article 12 (1) of the Constitution have been violated by failing to appoint public representatives for those local government bodies.

Provincial Councils and Local Government Minister Fayazir Mustapha, its Secretary, the Election Commission and its three members, the five members of the Delimitation Review Committee and the Attorney General, were named as respondents in this petition.

The fundamental rights petition claimed;

- ❖ To hold the polls for the local government bodies related to the year 2011 promptly.
- ❖ To declare that the fundamental rights guaranteed by Article 12(1) of the Constitution have been violated by one or more respondents.
- ❖ To declare that the fundamental rights guaranteed by Article 14(1)(a) of the Constitution have been violated by one or more respondents.
- ❖ To issue an order to the members of the Delimitation Review Committee to finalize the delimitation review recommendations within a specified time frame,
- ❖ To issue an order to the Minister in charge of Local Government to forward the review report to the President based on those recommendations.

- ❖ To issue an order to the Election Commission and its members to hold the local government authorities polls expeditiously.
- ❖ Litigation fees

Supreme Court Justices Sisira de Abreu, Nalin Perera and Vijith Malalgoda heard the petition.

This fundamental rights petition was filed in the year 2016 to get an order to hold the local government elections as soon as possible. Still, the petition hearing continued until February 10, 2018, when the local government elections were held, and the petitioners withdrew this petition on February 28, 2018.

### **19.9 Writ Petition against Local Government Delimitation Amendment Gazette**

*Wadugedara Wijeratne & 5 Others v. Faizer Mustapha-Minister of Provincial Councils & Local Government and two others - CA Writ Application No 373/2017-C.A.M. 30.11.2017*

#### **Background**

The local government election system, which existed according to the proportional representation system, was converted into a mixed system of divisions and proportional by the Local Government Elections (Amendment) Act No. 22 of 2012. Accordingly, the division of each local government body into divisions shall be done according to section 3C of the Act and gazetted by the President. Thus, on August 21, 2015, through the Extraordinary Gazette number 1928/26, the president published all divisions in the gazette for all local government authorities.

According to Section 3D of the Act, the minister in charge has the power to change the boundaries of these divisions

on the recommendations of a revision committee. Accordingly, a five-member delimitation revision committee, appointed by the minister, submitted a report on those divisions. Thus, the Minister announced the revised divisional delimitation on February 17, 2017, through Gazette No. 2006/44.

According to the 2015 Gazette, certain constituencies which had been decided as multi-member constituencies based on population composition were announced as single-member constituencies according to this new Gazette. Section 3D of the Act empowered the Minister to amend the limits of the constituencies announced by the President but not to amend the number of members.

Accordingly, a case was filed in the Court of Appeal by six voters of various local government bodies faced this problem by asking for a writ of certiorari to cancel the decisions made by this Gazette, a writ of prohibition to prevent other actions based on the said Gazette and a writ of mandamus to revise the order of the gazette. Also, the petitioners had requested to issue an interim injunction preventing them from taking any action according to the relevant gazette until the petition hearing is over. PAFFREL sponsored this writ petition.

Fayazir Mustapha, the Minister of Provincial Councils and Local Government, the Secretary of the said Ministry and the Attorney General were named as the respondents in this petition. The Court of Appeal petition was heard by the President of the Court of Appeal LTB Dehideniya, and the Court of Appeal Judges KK Wickramasinghe and Shiran Gunaratne.

With the concurrence of the other judges, issued notices to all the respondents on November 22, 2017, and an interim restraining order was also issued against the respondents till the next date of hearing.



Later, the petitioners' lawyers filed a motion in the Court of Appeal on November 30, 2017, to withdraw the petition as the respondents promised to deal with the matters requested.

**19.10. Cancellation of membership due to giving bribes to voters - Monaragala Pradeshiya Sabha Election Petition-2018**

*Sunil Shantha v. Tharanga Harshaka Priya Prasad Dissanayake & Others -HC (Monaragala) Election petition 1/2018*

In the local government election held on February 10, 2018, PAFFREL and the Centre for Monitoring Election Violence observed that the candidate contested representing Sri Lanka Podujana Peramuna for the Maduraketiya Division for the Monaragala Pradeshiya Sabha making various grants to the voters as part of his election campaign. Additionally, complaints were also made to the Election Commission about it.

According to the election result, that candidate won by getting a large number of votes. Although it is necessary to present an election petition challenging the victory, PAFFREL did not have the right to present it according to the Local Government Elections Act. The candidate nominated by the United National Party for that Maduraketiya division had received the votes in second place, and he came forward to submit an election petition. Accordingly, PAFFREL provided legal assistance as well as conducted investigations to obtain the necessary evidence to be submitted to the election petition. Accordingly, a petition was filed in the Provincial High Court of Monaragala, and the petitioner sought the Court to annul the election of the winning candidate on the basis of giving bribes to the voters by providing new water connections and new electricity connections to the voters of Maduraketiya Division

during the election period, providing goods to various voluntary organizations in that division, etc.

Information concerning one of the key allegations of this petition about a representative of the winning candidate making payments required to get new water connections and new electricity connections to the voters of Muduraketiya division was gathered based on the information requests directed by PAFFREL under the Right to Information Act.

After the hearing, the appointment of an agent of the winning candidate to bribe voters in anticipation of votes for the respondent was ruled as committing the offence of bribe. Thus the petitioner was held to be a duly elected member.

Against this decision, the respondent winning candidate has filed an appeal to the Supreme Court, and the appeal, bearing number(SPL) Application 228-2021, was dismissed by the Supreme Court on the 7th of June 2022.

(See Chapter 12 for further details of this case)



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"The silent and secret expression of a citizen's preference between one candidate and another by casting his vote is no less an exercise of the freedom of speech and expression than the most eloquent speech from a public platform"

Supreme Court Justice Mark Fernando  
Karunathilaka and Another v. Dayananda Dissanayake and Others  
(1999) 1 Sri LR. 157



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