

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

In the matter of an application under Article 126 of the
Constitution of the Democratic Socialist Republic of
Sri Lanka.

SC (FR) Application No.502/2010

1. P.S.R. Premalal
No.2, First Lane, Vidyala Mawatha,
Anuradhapura.
2. W.G. Karunaratne,
Neelavila, Suruwirugama,
Sooriyawewa.
3. W.M.A.C. Dissanayake,
'Jeewana', Kamburupitiya.
4. R.S.K. Mallawaarachchi,
61d, Feeldvive Terrace, Kandy Road,
Wewaldeniya.
5. K.L.Mahinda
No. 34, Mawarala Watta,
Mawarala, Matara.
6. S.P. Mallawaarachchi,
No.83, Anuradhapura Road,
Kahatagasdiliya.
7. P.K.W.Kalutota,
Palugaswala, Lunama,
Ambalantota.
8. R.W.G.D.P. Munasinghe,
No.42, Jana Udana House Scheme,
Talawa.

9. J.K.D.S.Samadara,
‘Manjula’, Kalahe, Mandawala, Galle.
10. W.D.S.Fernando,
No.32, East Moratumulla,
Moratuwa.
- 11.G.G.G. Rejikumara,
Palugampala Road, Sannasgama,
Lellopitiya.
12. V.A.N. Premarathna,
Gurugewatta Road, Wendesiwatta,
Ballapana, Galigamuwa.
13. W.G.N. Pathmini,
256/5, Flower Gardens, Weligama,
Matara.
14. E.A. Anushka Kumari,
No.20, Andagala Road, Matugama.
15. S.K. Samarasinghe,
H 11, Nila Niwasa, Penideniya,
Peradeniya.
16. P.H.Walpita,
‘Dahampaya’, Talagala, Gonapola
Junction.
17. H.I.M.Kulathunga,
No.52, ‘Nawakala’,Kiwldeniya,
Kulugamma.
18. K.C. Dasanayake,
Meewewa, Sub Post Office,

Narammala.

19. G.P.A.L. Pathirana,
No.193/1, Ibigala Road,
Katugastota.
20. I.M.S.K.M. Idisooriya,
No.163/3, M.C. Nilaniwasa, Hatton
House Mawatha, Hatton.
21. Y.S.P.P. Gunarathna.
No 401/ A/2, Dagonna, Negambo.
22. H.K.G Niroshana,
No. 671, Perakum Pedesa,
Kaduruwela, Polannaruwa.
23. A.M. Anura Thissa,
No.2/2, 3rd Lane, Kanupelella,
Badulla.
24. U.P. Dahanayake,
No.206/B/2, Halgala Road,
Alapaladeniya.
25. H.J. Piyasena,
'Jayanthi', uthuru uduwa, Kuda
Uduwa, Horana.
26. R.A.T.C. Weerasekara,
No.71, Railwayquarters,
Moratuwa.
27. Y.M. Soma Kumuduni,
No.223, Badabedda Watta,
Pannala.
28. S.P. Kusumawathie,

No.44/16, Sri Bodigaya Road,
Gampaha.

29. P.B. Wickremasinghe,
No.156, Dikkanda, Waturugama.
30. P.H.C. Pushpakumara,
No.601/66, Thammennakulama.
Anuradhapura.
31. W.M.U.S. Weerakoon,
No128, 'Banadara', Puliyankulama,
Anuradhapura.
32. D. Deepani Perera.
No.208, Aluthgama, Bogamuwa,
Yakkala

PETITIONERS

Vs.

1. (A) Wasala Mudiyansele Nimal
Jayantha Pushpakumara
Commissioner of Examinations,
Pelawatte, Battaramulla.
2. (B) Jawigodage Jayadeva Ratnasiri
Secretary, Ministry of Public
Administration and Local
Government and Democratic
Governance, Independence Square,
Colombo 7.
3. M.W. Jagath Kumara
4. M.G.I.Mhawatta

5. L.U.J.Perera
6. H.K.M.D.K.Kavisekara
7. B.D.Y.S.Wimalarathna.
8. N.P. Samarawickrema.
9. N.Y.Kohowala.
10. H.M.V.S.Jayawardena
11. S.P.Sirimanna
- 12.J.H.P.Samarasena
- 13.K.H. Somalatha
- 14.L.P.M.S.Pathirana
- 15.W.T.N.Silva
16. D.R. Jaysinghe
17. R.A.Wijayawickrema
18. T.K.J.T.Kumari
19. J.M. Chandralatha
20. P.N.P.K Karunarathna
21. H.I.R.Hathurusinghe
22. N.M.Y.Thushari
23. W.R.R.P.Wije Rupa
- 24.K.P.Chaminda
25. M. Wanigasekara
26. H.D.Satharasinghe
27. Vaantha Kumari
28. R.P.M.S.Rajapaksha
29. K.H. Pushpa Jennet
- 30.S.D.S.A. Rupasinghe
31. N.K.U.Kumari
32. H. Thilakawardena.
33. M.M.N.S.Kumara
34. K.D.S.Sanjeewana
35. W.D.N.Sirimanna
36. U.K.B.L. Priyadarshana

The 3rd to 36th Respondents C/O
Secretary, Ministry of Public
Administration and Home Affairs,
Independence Square, Colombo 7.

37 (A). Wasantha Deshapriya,
Acting Director, 28/10, Sri Lanka
Institute of Development
Administration, Malalasekara
Mawatha, Colombo 7.

38. Hon.Attorney- General, Attorney
General's Department, Colombo
12.

RESPONDENTS

39. (B) Dharmasena Dissanayake, Chairman

40. (B) A. Salam Abdul Waid, Member.

41. (B) Ms. D. Shiranthi Wijethilake,
Member

42. (A) Dr. Prathap Ramanujam, Member

43. (A) Mrs. V. Jegarasasingham, Member

44. (A) Santhi Nihal Seneviratne, Member

45. (A) S. Rannuge, Member

46. (A) D.C. Mendis, Member

47. (A) Sarath Jayathilake, Member.

The 39(B) to the 47th Respondents: of the
Public Service Commission, No.177,
Nawala Road, Narahenpita.

ADDED RESPONDENTS

Before: Buwaneka Aluwihare PC, J

H.N.J. Perera, J

L.T.B. Dehideniya, J

Counsel: J.C.Weliamuna, PC with Pulasthi Hewamanne for the Petitioners.

Nerin Pulle, DSG for the 1A, 2B, 39B, 45A and the AG.

Uditha Egalahewa PC, with Vishwa Vimukthi for the 3rd -36th Respondents.

Argued on: 06-02-2018

Decided on: 05-03-2019

L.T.B.Dehideniya, J.

The Petitioners being the public servants, and the candidates for the vacancies in Class III of the Sri Lanka Administrative Service invoke the fundamental rights jurisdiction of this court to challenge the legality and the correctness of the Limited Competitive Examination- 2007 for the recruitment to class III of the Sri Lanka Administrative Service, the recruitment process that followed the said examination, the selection of 3rd to 36th Respondents to class III in the SLAS, the failure of the 1st and 2nd Respondents or other authorities to conduct a proper and comprehensive investigation into the alleged fraudulent acts.

The Limited Competitive Examination-2007, which the Petitioners sat, had consisted of three question papers, namely General Administration, Financial Regulations and Case Study. The examination was to be conducted on 30-05-2009 and 31-05-2009. The Petitioners state that, on 28-05-2009, they discovered with credible evidence that the question paper on ‘case study’ had been leaked out to many candidates and they believed that the other two question papers were also leaked out. The contention of the Petitioners is that, the leakage of the question paper is a serious matter that vitiated the legitimacy and propriety of the Limited Competitive Examination-2007. The Petitioners state that the said

‘malpractice’ was brought to the notice of the 1st Respondent by the General Secretary of Sri Lanka Government, combined Management Assistants’ Services Union, by its letter dated 08-06-2009. A fresh examination was conducted on 14-11-2009, in respect of the question paper on case study. The Petitioners emphasize that, they had an agitation to have a fresh examination for other two question papers, and amidst their continuous demands for a fresh examination in respect of the other two subjects (General Administration and Financial Regulations), the authorities have taken no steps to redress their grievance.

According to the Petitioners, a list of interviewees was issued by the Department of Examinations, on or about 22-04-2010. The list contained the names of 77 candidates including the Petitioners, who were eligible to be interviewed. The Petitioners state, that the specific list contained the names of the several candidates who have been connected with the fraudulent act of leakage of the question paper pertaining to the ‘Case Study’. The Petitioners further complain that the marks obtained by specific candidates have not been included into the list. The Petitioners state that, they received letters by the 2nd Respondent for an interview to be held on 05-06-2010, for which they attended. The Petitioners state that, on or about 05-08-2010, the 2nd Respondent issued a list of candidates who have been selected for the recruitment to the Class III of SLAS and as per their contention, the list has failed to disclose either the total marks of each candidate or the breakdown of their marks for each subject. The Petitioners further accentuates, the fact that, it has been the practise, when releasing names of selectees, to give the marks of such selectees in order of merit. The Petitioners state that, they made a request to the 2nd Respondent, to release the said list with marks but the 2nd Respondent issued the list dated 11-08-2010, including the names of the candidates (3rd to 36th Respondents) instead. The Petitioners state that some candidates had obtained unrealistically higher marks for the question

paper on General Administration, and there was a rumour that the 13th Respondent involved in the type setting of the paper and simultaneously, 3rd, 4th, 5th, 6th, 7th, 9th, 11th, 12th, 16th and 20th Respondents had access to the content of the question papers. The Petitioners further state, that an inquiry relating to the fraud has been pending against the 3rd and 8th Respondents, who had been selected and majority of the Respondents have been included in the list through political affiliations, eliminating the Petitioners.

The Petitioners state that, the decisions, actions and inactions of the 1st and 2nd Respondents, including other authorities are illegal and amount to an infringement of the Fundamental Rights of the Petitioners guaranteed under Article 12(1) of the Constitution.

The 1st Respondent admits the fact that the Petitioners sat for the Limited Competitive Examination 2007 for SLAS. The 1st Respondent has received a compliant on 08-06-2009, about the leaking out of a question paper relevant to the 'Case Study', which was scheduled to be held on 31-05-2009 prior to the examination. The 1st Respondent states that an inquiry was launched upon the receipt of the compliant by the Department of Examination in terms of Public Examinations Act No: 25 of 1968 and further a complaint was made to the Criminal Investigation Department of Sri Lanka Police (CID).

The CID was successful in discovering the premature release of the question paper relevant to 'case study'. As the 1st Respondent states, the Examination pertaining to 'Case Study' held on 31-05-2009 was cancelled and the fresh examination was held on 14-11-2009. Meanwhile, several other similarly circumstanced candidates filed the writ application no.772/2009 to call for fresh

examinations in respect of all three question papers and the Court of Appeal dismissed the writ application. The 1st Respondent states that, the Department of Examinations issued a list containing 77 candidates who were eligible to attend the interview in order of their merit.

Meanwhile, The CID and Department of Examination were both conducting investigations in relation to the premature release of the question paper. The Department of Examinations was capable in identifying three candidates involved in the fraud and according to the 1st Respondent, the candidates who were involved in the fraud, were disqualified and removed from the selected list of candidates. Subsequently, the CID initiated criminal proceedings against the identified perpetrators, at the Kaduwela Magistrate Court.

The 3rd to 36th Respondents reiterate the contention of the 1st and 2nd Respondents. As the 3rd to 36th Respondents state, they were appointed to class III of the SLAS by letter dated 06-10-2010 of the 2nd Respondent.

The Respondents' Contention is that, the Petitioners have not complied with the Article 126(2) of the Constitution. The Article 126 (2) of the Constitution, describes the 'one month rule', which applies to the Fundamental Rights cases. What the Respondents' insist is that, the Petitioners have not complied with the 'one month rule' to institute this application.

Article 126 (2) of the Constitution states;

'Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself

or by an attorney-at-law on his behalf, within one month thereof, in accordance with such rules of court as may be in force, apply to the Supreme Court by way of Petition in writing addressed to such Court praying for relief or redress in respect of such infringement. Such application may be proceeded with only with leave to proceed first had and obtained from the Supreme Court which leave may be granted or refused, as the case may be, by not less than two judges.'

What the Respondents argue on this matter is that, the Respondents filed the Petition after 91 days, since the date their fundamental rights were alleged to have been violated and the application is time barred. The Respondents cite **Mahendran v. Attorney General (S.C. Application No.68/80)** and highlight the contention of Justice Wanasundera P.C stating,

'Article 126 requires that the application to the Supreme Court must be made within month of the date of the alleged infringement of the fundamental right. The Petition is clearly out of time.'

It is further argued in the case **Gamaethige v. Siriwardena and Other (1988) 1S.L.R. 384**; which states that, *'the pursuit of other remedies, judicial or administrative, does not prevent or interrupt the operation of the time limit.'*

Further, the Respondents uphold the contention of Sathya Hettige P.C.J, in the case **Liyanage and Another Vs. Ratnasiri Divisional Secretary,**

Gampaha and others(2013) 1.S.L.R.06, which in essence holds the view that, *the time limit within which an application for relief for any fundamental right or language right violation may be filed is mandatory and complied with.*

The case further asserts the fact, that the ‘month rule’ is a constitutional mandate.

In this case, the original examinations were scheduled to be held on 30-05-2009 and 31-05-2009. After being discovered, that the paper on ‘case study’ was leaked out, a fresh examination was held on 14-11-2009. They faced the interview on 05-06-2010. It is apparent, that the Petitioners were silent until the interview was over and after getting to know that, they were disqualified from the interview for the selection, they took steps to file this application. The law cannot excuse on their delay in applying to the court. It has been held by Justice Gamini Amaratunga, in **Ranaweera and others v. Sub-Inspector Wilson Siriwardena and Others (2008) 1.S.L.R.260**,

‘..... the court would entertain an application made outside the time limit of one month provided an adequate excuse for the delay could be adduced. For instance of a petitioner had been held incommunicado.....’

It is evident from the statements of the Petitioners that, they were informed about the alleged leakage of the question paper on the dates which the examinations were scheduled to be held. They were silent for a period of

time and upon the non-selection, they became enthusiastic to file this application. The Petitioners are unable to provide with an adequate excuse for the delay in filing the application. It is axiomatic that, when it comes to the law courts, the litigants must not sleep over their right to invoke the jurisdiction. The Petitioners have not complied with the 'one month rule' in filing this application.

The Respondents illustrate the mistakes in the Petitioners' application. What they insist is the futility of the application and the failure on the part of the Petitioners to name the necessary parties as Respondents. The futility of the application is explained by referring to the time which has lapsed, between the date on which the application was filed and the present. It is clear that, the Petitioners have not prayed for a relief to quash the appointments of the 3rd to 36th Respondents and the court has not granted interim reliefs to the Petitioners to restrict the 3rd to 36th Respondents being appointed to Class III of SLAS where they were appointed to the relevant positions by the 2nd Respondents' letter dated 06-10-2010, with effect from 08-10-2010. The 3rd to 36th Respondents have been appointed to the relevant stations on or about 13-01-2011 after they underwent a training session conducted by Sri Lanka Institute of Development Administration. It is clear to this court that, the purpose of the examination and interviews was already fulfilled and the Petitioners purpose of application to this court is apparently of no avail. The 3rd to 36th Respondents were rendering their service as government servants, to the country for last 8 years and their services were not interrupted. The Respondents quote the contention of Justice Shirani Bandaranayake in **Don Shelton Hettiarachchi v. Sri Lanka Ports Authority and Others (2007)2S.L.R.307,**

‘Learned President’s Counsel for the Respondents brought to our notice at the time of the hearing, which was admitted by the Petitioner, that both the Petitioner and the 5th Respondent had retired from the 1st Respondent authority during the pendency of this application and there it was futile for the Petitioner to proceed with this application.’

Justice Bandaranayke quoted the contention pronounced by Abrahams C.J, *‘this is a court of justice and not an Academy of Law’*.

As far as the current situation is concerned, the futility of the application is clear, owing to the fact that the 3rd to 36th Respondents have been appointed to the specific positions of SLAS and it would amount to a futility to proceed with the application.

The Respondents’ further illustrate the failure of the Petitioners to name the necessary parties as Respondents. As the Petitioners specify, their complaint on the infringement of Fundamental Rights, guaranteed by the Constitution is directed towards the 1st and the 2nd Respondents and other authorities to investigate and /or cause such investigation to be conducted into the said incident of leakage of the three question papers. The Respondents state, the failure of the Petitioners to name Inspector General of Police / Director of the CID of the police as necessary parties to their application.

The law has focussed on many purposes of naming officials. In **Samanthilake V. Earnest Perera and others (1990) 1 Sri.L.R 318**, Justice Amarasinghe has elaborated on the purposes. His Lordship has predominantly emphasized on the fact that naming officials has a supportive function towards the court. Such an act supports the court in the identification of those who could help the court in the exercise of its inquisitorial functions in clarifying the disputed facts. Another purpose which his lordship has stated is that the act of naming officials facilitate proof as to the question whether the specific act in question is executive or administrative. His contention was further extended to the extent the giving a title or a description of a state officer, supports in reducing the burden which falls on the Petitioners of adducing evidence to establish that the act in question was executive or administrative action. (Jayampathi Wickremarathne P.C, Fundamental Rights in Sri Lanka, pg.466).

It is evident, that the Petitioners failure in naming the Inspector General of Police/ Director of the CID of the Police, up to a certain extent influenced the inquisitorial functions of this court, especially in regard to the clarification of certain facts on the investigations conducted as to the question paper on ‘Case study’.

The Respondents further state that 08 candidates have not been included in the application as Respondents. The situation of these 08 candidates is, they sat for the three examinations and have been shortlisted on the marks obtained for the three question papers. The Petitioners prayed for an interim relief to cancel the question papers on General Administration and

Financial Regulations and if this court granted the interim relief, the interests of these 08 candidates would have been adversely affected.

‘He who seeks equity must do equity’ is the maxim which specifies that, when a litigation is involved, the claimant must act fairly towards his opponent, if he wants to claim relief. In the simplest sense, persons seeking equitable relief must accord to the other parties concerned all the equitable rights, in the subject matter to which they are entitled. The Petitioners are obliged to name the candidates as Respondents to the application, if they foresaw the fact that the rights of the 08 candidates are at a stake.

The Respondents uphold the contention of Justice Shirani Bandaranayke in **Don Shelton Hettiarachchi v. Sri Lanka Ports Authority and others (2007) 2S.L.R.307,**

‘This need for having necessary parties before court was considered by this court in Farook v. Siriwardena, Election Officer and Others, where it was clearly stated that the failure to make a party to an application of persons, whose rights could be in the proceedings is fatal to the validity of the application.’

A further doubt has arisen in relation to the honesty and the disclosure by the Petitioners. The Petitioners in their Petitions and affidavits complained that the 1st Respondent, has not conducted an investigation as to the leakage of question papers but prima facie evidence is there in proof of the fact that the 1st Respondent has conducted an inquiry in terms of Public Examinations

Act No.25 of 1968. These are contradictions in the statements of the Petitioners. Further the Petitioners state a misleading fact in relation to the B-Report. The Petitioners allege, that the B-Report consists about a leakage of 03 question papers but when concerning prima facie evidence, it depicts leaking out of the question paper relevant to ‘Case Study’.

It is in general perception of law, that a party seeking an equitable remedy must not himself be guilty of unconscionable conduct. **In Dering v. Earl of Winchelsea (1787) 1Cox 318,**

‘.....such a representation of Sir Edward’s conduct certainly places him in a bad point of view; and perhaps it is not a very decorous proceeding in Sir Edward come into this Court under these circumstances..... A man must come into a Court of Equity with clean hands, but when this is said, it does not mean a general depravity: it must have an immediate and necessary relation to the equity sued for, it must be a depravity in legal as well as a moral sense.’

The Respondents quote the contention of Justice Hector Yapa, in **Jayasinghe v. The National Institute of Fisheries (2002)1 S LR 277,** where his lordship held that,

‘The Petitioner’s conduct lacked uberima fides. The application has to be rejected in limine on this ground as well.’

The Petitioners' contradictions as to the 1st Respondent and the contents of the B-Report causes a doubt in regard to the uberima fides of the Petitioners' conduct which disentitles them to obtain relief.

The Petitioners, not complying with the 'one month rule' of the Article 126(2), failure in naming the parties, and the falsity in petitions and affidavits as to the material facts, rendered the application defective.

The court upholds the contention that, no violation of the Fundamental Right guaranteed to the Petitioners under Article 12 (1) of the constitution has taken place.

Petition dismissed.

Judge of the Supreme Court

H.N.J Perera, J.

I agree

Chief Justice

Buwaneka Aluwihare PC, J.

I agree

Judge of the Supreme Court

