

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

In the matter of an application under and in terms of
Articles 17 and 126 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

SC FR Application No. 35/2016

1. Mohamed Hussain Hajjar Muhammad
5/4, Meda Mawatha
Weligama.
2. M.H.T. Indrajith Priyadarshana Krishali
Hiriketiya Road,
Dikwella.
3. Bandula Wijesekera
Sirimeda Medura
Lelwala
Neluwa.
4. Miyanawathura Ihala Gamage Sunil,
Morawaka Road,
Lelwala
Neluwa
5. Daya Pushpakumara Hewa Battige
Gunasandana
Kamburugamuwa.
6. Lakshman Nirmal Samarasinghe
Samaragiri
Komangoda
Thihagoda.
7. Sanath Hettiarachchi
'Nirmala' Kamburupitiya Road,
Kirinda Puhulwella.

8. Abeywickrema Pahuruthotage
Dayananda,
Hanferd
Rakwana Road
Deniyaya.
9. Sunil Alladeniya
'Suhanda' Kaddugewatta,
Deiyandara.
10. Ishwarage Mahinda,
No. 3, Mananketiya
Urubokka.
11. Sujeewa Wedage
'Gayana'
Kapugama North
Devinuwara.
12. Weerasuriya Mudiyanseelage Sanjeewa
Priyantha,
'Ranmini' Gathara
Kamburupitiya.
13. Walliwala Gamage Nihal de Silva
'Siri Niwasa', Ihala Athuraliya,
Akuressa.
14. Somasiri Weeraman
Kadduwa Road,
Malimbada
Palatuwa.
15. I.D. Indunil Prasanga Jayaweera,
75, Yasabedda Road,
Akuressa.
16. Hewa Halpage Charles Gunadasa,
Pelagawawatte,
Udupillagoda
Hakmana.

17. Hewa Kankanamge Wimal Priyajanaka
No. 37, Ritrickpark,
Kekanadura.

18. Rubasinghe Siriwardena Mahinda,
'Samanala'
Alapaladeniya.

Petitioners

Vs.

1. Election Commission of Sri Lanka,
Election Secretariat,
Sarana Road,
Rajagiriya.

2. Mahinda Deshapriya
Chairman,
Election Commission of Sri Lanka,
Election Secretariat,
Sarana Road,
Rajagiriya.

3. N.J. Abeysekera PC.,
Member

4. S. Ratnajeewan H. Hoole,
Member,

3rd to 4th Respondents all at
Election Commission of Sri Lanka,
Election Secretariat,
Sarana Road,
Rajagiriya.

5. Faizer Mustapha,
Minister of Local Government &
Provincial Councils,
Ministry of Local Government &
Provincial Councils,
330, Dr. Colvin R. De. Silva Mawatha,
Colombo 02.

6. Chandra Abeygunawardana
Secretary,
Weligama Urban Council;
Weligama.
7. Mangalika Somakanthi Ratnaweera,
Secretary,
Dickwella Pradeshiya Sabha
Dikwella.
8. Wanniarachchi Kankanamge Chandana
Secretary,
Thawalama Pradeshiya Sabha
Thawalama.
9. Liyanage Premasiri
Secretary,
Neluwa Pradeshiya Sabha
Neluwa.
10. Ranjani Lokuliyana
Secretary,
Weligama Pradeshiya Sabha
Weligama.
11. Hakmana Hewage Asanka Kumari
Secretary,
C/O: L. Thomson
Secretary (covering up)
ThihagodaPradeshiya Sabha
Thihagoda.
12. Dikkumburage Dayaseeli
Secretary,
Kirinda Puhulwella Pradeshiya Sabha
Kirinda Puhulwella
13. Mallika Dahanayake
Secretary,
Kotapola Pradeshiya Sabha
Kotapola.

14. Agnes Christina Nirmala Jayawardana
Secretary,
Mulatiyana Pradeshiya Sabha
Mulatiyana.

15. Liyanage Indra Premalatha
Secretary,
Pasgoda Pradeshiya Sabha
Pasgoda.

16. Samaratunga Vidhanarachichige
Karunasiri
Secretary,
Devinuwara Pradeshiya Sabha
Devinuwara

17. Wimala Abeykone
Secretary,
Kamburupitiya Pradeshiya Sabha
Kamburupitiya.

18. Kankanam Pathiranaage Premawathie
Secretary,
Athuraliya Pradeshiya Sabha
Athuraliya,

19. J.P.W.V.M.W.G.G. Almeida
Secretary,
Malimbada Sabha
Malimbada

20. M.A. Gamini Jayaratne
Secretary,
Akuessa Pradeshiya Sabha
Akuessa.

21. N.M.G.H.G. Abeywicrema
Secretary,
Hakmana Pradeshiya Sabha
Hakmana

22. Polwatte Gallage Piyal Ranadeva,
Secretary,
Matara Pradeshiya Sabha
Matara.
23. Mudalige Jinadasa
Secretary,
Pitabeddera Pradeshiya Sabha
Pitabeddera
24. The Attorney General
Attorney General's Dept
Colombo 12.
25. Indika Sri Mangala Abeykoon
Delwattagoda
Welihinda
Delpitiya
26. Ranasinghe Arachchige Shantha
Medagedera
Aandaluwa
Gomila
Mawarala.
27. Eriwarandawe Ranasinghe Hewage Priyantha
No. 11 Rajawatta
Wehelgoda
Matara
28. Rajitha Saranga Edirisinghe
"Sampatha"
Thalalla South
Gandara
29. Anura Wijesinghe
Maramba
Akuressa
30. Koswatta Gamage Amaradasa
Bogahawila
Thalahagama
Makandura

31. Pathmasiri Kularathna Sooriyarachchi
“Prabodani”
Akurugoda
Kamburupitiya.

Respondents

Before : Priyasath Dep, PC. J
Anil Goonerathne J,
Nalin Pereaara J.

Counsel : Manohara de Silva , PC for the Petitioners

Romesh de Silva, PC with Sugath Caldera for the 5th
Respondent.

J.C. Welianuma for the 25th Respondent.

Kuwera de Zoysa, PC for the 26th Respondent

Pulasthi Rupasinghe for the 27th, 29th and 31st Respondents.

Chandaka Jayasundera with Rukmal Cooray for the 28th
Respondent.

Charaka Jayaratne for the 30th Respondent.

S. Rajaratnam, PC ASG with Sureka Ahamed, SC for the AG.

Argued on : 30-09-2006,13-09-2006,02-11-2006,
09.05.2017 (mentioned)

Written Submissions : Not filed

Decided on : 15-12-2017

Priyasath Dep,PC, CJ

The Petitioners in their Petition stated that they are citizens of Sri Lanka, duly registered electors, and are all former Chairman and/or Deputy Chairman of several local authorities in the Districts of Galle and Matara as described in the Petition. The Petitioners further state that they intend to contest, and vote, at the forthcoming Local Authority elections which ought to have been held but so far not held.

The 1st Respondent is the Elections Commission of Sri Lanka and the 2nd to 4th Respondents are the Chairman and members of the Elections Commission of Sri Lanka, who presently exercise the powers of the Election Commission of Sri Lanka established by Article 103 of the Constitution. The Respondents are required to hold Local Authority Elections including the elections for the Districts of Galle and Matara in terms of Articles 103(2), 104(B)(1) and 104 B(2) of the Constitution read with provisions of the Local Authorities Elections Ordinance as amended, Urban Councils Ordinance as amended and the Pradeshiya Sabhas Act No. 15 of 1987 as amended.

The Petitioners state that the 1st Petitioner contested the election for an Urban Council and the others contested the elections held for Pradeshiya Sabha. The election was held on 17.03.2011. The 1st Petitioner was nominated as Chairman of an Urban Council and the 2nd -17th Petitioners were nominated as Chairman of Pradeshiya Sabha and the 18th Respondent was nominated as Vice Chairman of a Pradeshiya Sabha.

The Petitioners state that Minister of Local Government and Provincial Councils at that time, appointed 01st April 2011 as the date on which the term of office of members of each of the Urban Council and Pradeshiya Sabhas shall commence in terms of section 10(1) (B) of Urban Councils Ordinance and section 5(1)(b) and 6 of the Pradeshiya Sabhas Act No. 15 of 1987 respectively. In proof thereof Petitioners attached a copy of Extra Ordinary Gazette No. 1699/47 dated 01.04.2011 and marked P2.

The Petitioners states that in terms of section 10(1)(b) of the Urban Council Ordinance as amended, and section 5(1)(b) of the Pradeshiya Sabha Act, the term of members of an Urban Council and/or Pradeshiya Sabha shall be 48 months. Accordingly, the Petitioner's term of office was due to end on 01.04.2015.

The Petitioners state that the term of office of the local authorities expired on 01-04.2015. Therefore the next election should be held before the expiry of the terms of the present

councilors. which was due to expire on 01.04.2015, the next election should have been held before this date.

The Petitioners state that in terms of Section 25 of Local Authorities Elections Ordinance as amended by Act No. 24 of 1987, the election of members of Urban Councils and Pradeshiya Sabhas shall be held within six months preceding the date on which the term of office of the members who are to be elected is due to commence. Therefore the election should be held between 01.10.2014 and 01.04.2015.

The Petitioners further state that in terms of section 26 of the Local Authorities Elections Ordinance, when an election is due to be held, the election officer shall publish a notice of his intention to hold the election, appoint a returning Officer and call for nominations.

The Petitioners state that no election officer has been appointed by the 1st Respondent Commission and/or by the 2nd Respondent Chairman prior to constituting the 1st Respondent Commission as required by section 27(1) of the Local Authorities Elections Ordinance as amended read with Section 5(2) of the same law, and in the circumstances no notice have been published for holding of elections and consequently no nominations have been called for.

The Petitioners state that;

- a) Prior to and until constituting the 1st Respondent Commission on or about 16.11.2015, the 2nd Respondent, and
- b) Subsequent to constituting the 1st Respondent Commission to-date, the first Respondent Commission and/or 2nd to 4th Respondents

have acted ultra vires the provisions of the Urban Council Ordinance and/or the Pradeshiya Sabha Act and/or Local Authorities Election Ordinance read with Article 103(2), 104 B(1) and 104 B(2) of the Constitution and the Petitioners state that the said conduct and /or inaction is arbitrary, unreasonable, illegal, unlawful and is a continuing violation of the Petitioner's rights guaranteed under Article 12(1) of the Constitution.

Further , the 1st Respondent Commission and/or 2nd to 4th Respondents, by their conduct and /or inaction have deprived the electors, including the Petitioners, an opportunity of electing their representatives to the several Local Authorities. The Petitioners further state that the 1st Respondent and/or 2nd to 4th Respondents have a legal duty to take all necessary steps under the aforementioned provisions of the law and in the circumstances, a cause of action has arisen in favour of the Petitioners seeking the intervention of the Supreme Court to compel the 1st Respondent and/or 2nd to 4th Respondents to perform their duties as required by law.

The Petitioners state that subsequent to the expiry of the terms of office of the Petitioners, the Secretaries of the several Urban Councils and Pradeshiya Sabhas the Petitioners were elected to, now exercise, perform and discharge the rights, privileges, powers, duties and functions of the Council, Chairman and Deputy Chairman illegally.

Petitioner prayed for following reliefs:

- a) Declare that the 1st Respondent Commission and/or the 2nd to 4th Respondents and/or the State have violated or infringed the fundamental rights of the Petitioners as guaranteed by Articles 12(1) of the Constitution.
- b) Declare that the Petitioners fundamental rights guaranteed by Article 12(1) of the Constitution have been infringed and/or continue to be infringed by the failure and/or refusal of the 1st Respondent Commission and/or the 2nd to 4th Respondents and/or the State to take all necessary steps to hold elections for local authorities as required by law;
- c) Make order to direct the 1st Respondent Commission and/or 2nd to 4th Respondents and/or the State to take all necessary steps to hold elections for the Urban Councils and Pradeshiya Sabhas as required by law;
- d) Declare the Petitioners fundamental rights guaranteed by Article 12(1) of the Constitution have been infringed and/or continue to be infringed by the 1st Respondent Commission and/or 1st to 4th Respondent and /or the State by permitting the 6th to 23rd Respondents (Secretaries of the Urban Councils and Pradeshiya Sabhas) from having exercising, performing and discharging rights, privileges, powers, duties and functions of the Chairman and Deputy Chairman of Urban Councils and Pradeshiya Sabhas.

This Application was supported for leave to proceed on 29-04-2016 and the Court granted leave to proceed against the 1st Respondent (Election Commission of Sri Lanka) for the alleged violation of the Petitioners fundamental rights enshrined in Article 12 (1) of the Constitution.

The Court granted time to the Respondents to file objections within four weeks and for the Petitioners to file counter objections if any within two weeks thereafter and the case was fixed for hearing on 08-07-2016.

On 08-07-2016 the case was not taken up for hearing as the Respondent had failed to file objections and also due to the fact that Hon. Priyantha Jayawardena PC. J. declined to hear this case. This case was re fixed for hearing on 28-07-2016.

On 12-07-2016 a motion was filed on behalf of the 2nd, 3rd, 4th (Chairman and members of the Election Commission) and 24th Respondent (Attorney General). Along with the motion the 2nd Respondent by way of an affidavit filed a statement of objections with annexures marked 2R-2R6.

On 15-07-2016 seven Petitioners who are electors of local authorities of the Southern Province filed papers to intervene. They opposed the application filed by the Petitioners. On 20-08-2016 the Court allowed the applications for intervention and the Petitioners of the applications for intervention were cited as 25th-31st Respondents.

The Application was taken up for hearing 13-09-2015 and on 02-11-2016. The Court heard the submissions of the learned Presidents Counsel for the Petitioners, Learned Additional Solicitor General for the 1st-4th Respondents and Counsel for the Intervenient Parties. In view of the objections filed on behalf of the 1st-4th Respondents and the submissions made by the learned Additional Solicitor General, the Court was of the view that the 5th Respondent , the Minister of Local Government and Provincial Councils who was discharged from the proceedings at an earlier stage, is an important party for the determination of the Application. The Court issued notice on him and directed him to file objections. Several dates were given to the 5th Respondent to file objections but on 09-05-2017, the Counsel who appeared for the 5th Respondent informed Court that the 5th Respondent will not be filing objections. Thereafter Court reserved the judgment. Although parties had the opportunity to file written submissions none of the parties availed itself the opportunity to file written submissions.

The Respondents had taken up the position that the Petitioners Application is based on repealed sections of the Local Government Elections Ordinance and therefore the Application should be rejected. The Petitioners in their applications failed to refer to Local Authorities Elections (Amendment)Act. No 22 of 2012 . This Amending Act repealed several sections and introduced new amendments and brought about significant changes to the Local Authorities Election Ordinance. Petitioners did not claim relief against the Minister of Local Government and Provincial Councils who plays a vital role in implementing the Local Authorities Elections (Amendment)Act. No 22 of 2012. The learned President Counsel for the Petitioner consented to the discharge of the 5th Respondent from the proceedings. As the Application is not properly constituted and no relief is claimed against the 5th Respondent we considered whether the Application should be rejected or not. However we find that the main allegation is for failure to hold elections which affects the franchise of the people which is a fundamental right. Therefore we proceed to hear and determine this application.

The section 3A of the Local Authorities Elections (Amendment)Act. No 22 of 2012,.requires the Minister with the coming into operation of this section, by order published in the Gazette, establish a National Delimitation Committee (in this part referred to as the “National Committee”) which shall consist of five persons to be appointed by the Minister, one of whom shall be nominated by him to be the Chairman of the National Committee.

Section 3B gives a Mandate to the National Committee to make recommendations to the Minister for the division of each local authority area into wards, taking into consideration the requirements set out in subsection (3), and to determine the boundaries of each ward and assign a name and a number to each such ward. ”

Section 3B5 requires the National Committee after fulfilling its mandate to submit a report to the Minister with recommendations by such date determined by the Minister.

The section 3C which requires the Minister by notification in the gazette, publish the number of wards and boundaries, names and the numbers assigned to each ward so created on the recommendation by the National Committee in respect of each respective local authority. Where the National Committee has recommended the creation of multi member wards, the name and number of each such multi member ward, the name of the local authority concerned and the number of members to be returned in respect of each such multi-member ward shall also be specified.”

Section 3D the Minister has the power to alter the of any ward. Section 3D reads as follows:

- (1) The Minister may, where any alteration is made to the limits of any local authority, cause an alteration to be made to the boundaries of the wards of that local authority as published in the notification made under section 3C. Further the alteration shall be made on the recommendation of a Committee consisting of five persons appointed by the Minister and the requirements specified in section 3B shall apply to and in respect of any such alterations being made.
- (2) The new boundaries of each ward whose boundaries are altered by the Minister under subsection (1) , shall be published in the gazette and shall take effect in respect of an election held under this ordinance in such local authority, immediately after such alterations are effected.

The 2nd Respondent in his affidavit stated that the Minister under Section 3A of Act No. 22 of 2012 a National Delimitation Committee was appointed with effect from 07.12.2012 by Gazette No. 1788/15 of 12.12.2012 which was marked as 2R2.

The National Delamination Committee submitted a report giving its recommendations to the Minister concerned and the Minister submitted the report to the President. The President has published the report in Gazette (Extraordinary)No. 1928/26 dated 21.08.2015 which was marked as 2R3.

The Minister under section 3D of the Act No. 22 of 2012 caused an alteration to the boundaries of the wards. Accordingly a committee was appointed to make a recommendation on alterations of boundaries. The committee commenced their duties on 01.11.2015 and recommendation of the committee is pending. The process concerned is still not completed.(at the time of filing objections on 05-07-2016.)

It is the position of the Elections Commission that the Commission could hold elections only on completion of the delimitation process.

The 2nd Respondent stated that he informed the Minister of Provincial Council and Local Government that there are technical errors in Act No. 22 of 2013 and it has to be amended to hold an election. (2R5)

The 2nd Respondent had taken up the position that the next election has to be held according to the provisions of the Local Authorities Elections (Amendment) Act No 22 of 2012 which is in force at the time of expiry of the term of office of the present councilors.

We have also considered the position of the intervenient parties and intervention was permitted by this court. It is supportive of the position of the 1st Respondent Commission. However the Minister concerned who had a pivotal role to play had not filed an affidavit explaining the delay. Therefore we have to take it for granted that the Minister has no excuse or justification to offer to explain the delay. According to the material placed before this court by the 2nd Respondent there is a further delay in holding the elections. (Affidavit was filed on 05-07-2016) There is no

justification in delaying the holding of elections. There is no provision in law to keep on extending the period indefinitely. Franchise would mean right to vote and citizens should not be denied of such right or privilege. Local authorities are elected for fixed terms (4 years). Citizens expect to elect new members at the end of such period. That right should not be denied. In the case in hand as observed above there could be impediments to hold elections and this court is mindful of same but there cannot be an inordinate delay, to hold elections. There is a legitimate expectations of the people to elect members of local authorities of their choice.

Though Local Government (Amendment) Act 22 of 2012 was enacted in 2012 even up to now local government elections could not be held under the amending Act as the authorities had failed to implement the provisions of the Act. The long delay is inexcusable. The terms of the local authorities expired in 1st of April 2015. Local authorities elections were not held for past two and a half years which had deprived not only the Petitioners right to franchise but all the eligible voters of this country. In 1987 by Act No 24 of 1987 Parliament introduced an amendment to section 25 of the Local Authorities Ordinance to hold elections within the period of six months preceding the date on which the term of office of the members who are to be elected will commence. This is to ensure that people will continue to have representatives in the Local Authorities without a break. When terms of the Local Authorities due to expire in 1st of April 2015 it was obvious to the legislature and to the executive that it is not possible in the near future to hold elections under Act No. 12 of 2012. The Parliament did not take legislative measures to remedy this situation. As a result for a period of two and a half years the voters were deprived of their right to appoint representatives of their choice and the authorities are managed by Secretaries of the Councils who are public servants.

Franchise is a fundamental right enjoyed by people. According to Article 3 of the Constitution “In the Republic of Sri Lanka sovereignty is in the people and is inalienable. Sovereignty includes the powers of the government, fundamental rights and the franchise”. Franchise is a fundamental right recognized under Article 10 and 14(1) of the Constitution. The failure to hold elections on the due date or postponing is a violation of a fundamental rights of the people. Under Article 4(d) of the Constitution the fundamental rights which are by Constitution declared and recognized shall be respected, secured and advanced by all organs

of the Government and shall not be abridged, restricted or denied save in the manner and to the extent hereinafter provided. In the present case the legislature as well as the executive had violated this Article.

Local authorities has a long history and it plays an important role at the grassroot level. Its functions are regulation, control and administration of all matters relating to the public health, public utility services and public thoroughfares and generally with the protection and promotion of comfort, convenience and welfare of the people and the amenities of the town/village. It is stated that its activities covers from the cradle to the grave. Some local authorities have maternity clinics and burial grounds/ cemeteries are controlled and administered by the Local Authorities. By delay in holding elections people are deprived of representatives who could have addressed their grievances and attend to their welfare needs.

According to the Local Authorities Ordinance, the Election Commissioner/Commission is duty to bound to hold elections and it is his or its statutory duty. Although Local Authorities (Amendment) Act No. 22 of 2012 was enacted in 2012 up to now it is not possible to hold elections under that as the necessary requirement to hold elections are not fulfilled. Therefore it is an empty shell and devoid of power and not operative/operable as far as elections are concerned and it is not possible to hold elections until and unless the delimitation process is concluded. I find that the legislature by its inaction and the executive including the Minister and others involved in discharging the duties/functions under the Local Authorities (Amendment) Act No. 22 of 2012 have contributed to the delay in holding the elections. The fundamental rights jurisdiction under Article 126 does not extend to the Legislature. The Petitioners fundamental rights are violated by the state.

The Petitioners alleged that the 1st Respondent (Election Commission) and its Chairman and members (2nd-4th Respondents) violated their fundamental rights. The Petitioners did not make any allegation against the 5th Respondent who is the Minister of Local Government and Provincial Councils.

The Court granted leave to proceed only against the 1st Respondent (Election Commission of Sri Lanka) for the alleged violation of the Petitioners fundamental rights enshrined in Article 12 (1) of the Constitution. The scope of this application is therefore restricted to the conduct of the

Election Commission.(1st Respondent.) The 2nd Respondent who is Chairman of the Commission (1st Respondent) in his affidavit explained the delay in holding the elections. We accept the explanation given by him and hold that there is no violation of the fundamental rights of the Petitioner committed by the 1st Respondent and its Chairman and members (2nd-4th Respondents)

Upon a consideration of all the material placed before court this court is of the view that the state should take steps to hold elections. As such this court only allow sub paragraph ‘d’ of the prayer to the petition. We direct Respondents to take necessary steps to ensure that the elections are held without further delay.

Chief Justice

Anil Gooneratne, J.
I agree.

Judge of the Supreme Court

Nalin Perera, J.
I agree.

Judge of the Supreme Court