

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

***In the matter of an application for mandates  
in the nature of Writs of Certiorari and  
Mandamus under Article 140 read with  
Article 104H of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.***

**SC WRIT Application No.  
33/2025**

1. Jeevan Thondaman,  
Secretary,  
Ceylon Workers Congress,  
No. 72, Ananda Coomaraswamy  
Mawatha,  
Colombo 07.

**PETITIONERS**

Vs.

1. Returning Officer,  
Maskeliya Pradhesiya Sabha,  
Election Officer,  
Nuwara Eliya.
2. Mr. R. M. A. L Rathnayake,  
Chairman,  
Election Commission

3. Mr. A. A. Faaiz,
4. Ms. Anusuya Shanmuganathan,
5. Prof. Lakshman Dissanayake,  
All who are Members of the  
Election Commission.
6. Mr. Saman Sri Rathnayake,  
Commissioner General of Elections  
All of Election Commission of Sri Lanka,  
Election Secretariat,  
P.O. Box 2  
Sarana Mawatha,  
Rajagiriya.
7. Ranjith Madduma Bandara,  
General Secretary,  
Samagi Jana Balavegaya,  
No. 592, Bangala Junction,  
Kotte Road,  
Pitakotte.
8. Dr. Nihal Abeysignhe,  
General Secretary,  
Jathika Jana Balawegaya,  
No. 404/20,  
Pannipitiya Road,

Pelawatte,  
Battaramulla.

9. Sagara Kariyawasam  
General Secretary  
Sri Lanka Podujana Peramuna  
13/16,  
Nelum Mawatha,  
Jayanthipura,  
Battaramulla.

10. Ranjan Kumara Senevirathna  
Sarvajana Jana Balaya Party,  
No.111, Park Avenue,  
Colombo 8.

11. Lasantha Alagiyawanne,  
Secretary,  
People's Alliance,  
No.301, T.B. Jaya Mawatha,  
Colombo 10.

12. Hon. Attorney General  
Attorney General's Department,  
No.159, Hulftsdorp Street,  
Colombo 12.

**RESPONDENTS**

**BEFORE:**           **S. THURAIRAJA, PC, J.**  
**MAHINDA SAMAYAWARDHENA, J. AND**  
**SAMPATH B. ABAYAKOON, J.**

**COUNSEL:**       Dr. K. Guruparan instructed by Janani Iyyathurai for the Petitioner.  
  
Kanishka de Silva Balapatabendi, DSG. with Nayanathara  
Balapatabendi, SC. and a legal officer for the Election Commission for  
the Respondent

**ARGUED ON:**    01<sup>st</sup> April 2025 and 03<sup>rd</sup> April 2025

**DECIDED ON:**   04<sup>th</sup> April 2025

**THURAIRAJA, PC, J.**

1. The instant matter is a writ application filed challenging the decisions of Returning Officer to reject the nomination papers of the Ceylon Worker's Congress in relation to the local authorities' elections to be held on 06<sup>th</sup> May 2025 on the basis that it was not submitted by an authorized person.
2. When the matters were called before this Court on 01<sup>st</sup> April 2025, the learned Deputy Solicitor General raised a preliminary objection. While this preliminary objection concerns all the writ matters before this Court with respect to the aforementioned election, certain matters were categorized based on the questions before this Court, and the merits of such applications were discussed in spite of the preliminary objection for the purpose of clarity and completion.
3. However, as this matter is one that relates to the factual circumstances of it and not any ambiguities in the law, I see no necessity to dwell into the merits of it beyond the

preliminary objection. I shall reproduce below the observations of this Court on the preliminary objection for ease of reference. The same observations have been reproduced in judgments relating to all the connected matters.

## **PRELIMINARY OBJECTION**

4. As noted hereinabove, in respect of all the writ matters filed before this Court, the learned Deputy Solicitor General raised a preliminary objection contending that Petitioners of these writ matters ought to have sought relief not from the Supreme Court but from the Court of Appeal under Article 140 of the Constitution, as what the Petitioners have sought to challenge by their applications are decisions of Returning Officers, namely, the rejection of nomination papers by them—as opposed to decisions of the Election Commission itself.
5. Let me start by stating that, according to section 31(2) of the Ordinance, the decision of the rejection of a nomination paper by the returning officer is final and conclusive without any involvement of the Commission.

*“31(2) Where any nomination paper has been rejected by the returning officer under subsection (1), the returning officer shall inform the secretary of the recognized political party or the group leader, as the case may be, who had submitted such nomination paper the fact of such rejection. The decision of the returning officer to reject such nomination paper shall be final and conclusive.”*

6. Article 140 of the Constitution provides that,

*“Subject to the provisions of the Constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any Court of First Instance or tribunal or other institution and grant and issue, according to law, orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto*

against the judge of any Court of First Instance or tribunal or other institution or any other person:

**[Provided that Parliament may by law provide that in any such category of cases as may be specified in such law, the jurisdiction conferred on the Court of Appeal by the preceding provisions of this Article shall be exercised by the Supreme Court and not by the Court of Appeal.]**<sup>1</sup>

7. Very clearly, as the proviso hereto sets out, this Court only exercises writ jurisdiction with respect to such categories of matters that are expressly vested upon it by law, whereas writ jurisdiction in general is vested with the Court of Appeal.
8. Within Chapter XIV A of the Constitution, which establishes the Election Commission, Article 104H provides that,

***“(1) The jurisdiction conferred on the Court of Appeal under Article 140 of the Constitution shall, in relation to any matter that may arise in the exercise by the Commission of the powers conferred on it by the Constitution or by any other law, be exercised by the Supreme Court.***

*(2) Every application invoking the jurisdiction referred to in paragraph (1), shall be made within one month of the date of the Commission of the act to which the application relates. The Supreme Court shall hear and finally dispose of the application within two months of the filing of the same.”*<sup>2</sup>

9. While it may *prima facie* appear that this Court exercises writ jurisdiction, by virtue of Article 104H, with respect to all such things coming under the purview of the Election

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<sup>1</sup> Emphasis added

<sup>2</sup> Emphasis added

Commission, the learned Deputy Solicitor General submits this Article to be one that requires a more nuanced application. It was her submission that the term “Commission” in Article 104H referred not to the Commissioner-General nor any other officer of the Commission but to the Commission itself.

10. In support of her submission, she cited ***Ghany v. Dayananda Dissanayake, Commissioner of Elections and Others***,<sup>3</sup> which I shall advert to later.
11. The impugned decisions to reject nominations were clearly taken by Returning Officers. It was submitted that such rejections were a specific statutory function independently exercised by such Returning Officers that does not amount to a decision of the Commission itself. Accordingly, it was submitted that decisions of Returning Officers to reject nomination based on legal requirements set out in the *Local Authorities Elections Ordinance, No. 53 of 1946* did not fall within the ambit of Article 104H of the Constitution.
12. Learned Counsel for the Petitioners argued, with reference to Section 4 and 5 of the *Local Authorities Elections Ordinance, No. 53 of 1946*, that Returning Officers are appointed as agents of the Commission to carry out the functions of the Commission in each of the districts. To this end, they further highlighted the fact that Returning Officers so appointed are answerable to the Commission in terms of Article 104F and 104G of the Constitution.
13. Section 4 of the *Local Authorities Elections Ordinance* provides that,

*“(1) The Commissioner may appoint by name or by office for each district in Sri Lanka, a fit and proper person to be or to act as district returning officer and one other person to be or to act as the returning officer for each of the local authority area or of any particular local authority, as the case may be, in a district, and such*

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<sup>3</sup> [2004] 1 Sri L.R. 17

*number of other persons as may become necessary to be or to act as assistant returning officers for that district.*

*(2) There may also be appointed such clerical and minor staff as maybe necessary to assist the aforesaid officers in the performance of their duties under this Ordinance.*

*(3) Every person appointed under the preceding provisions of this section shall be deemed for all purposes to be a public servant and shall be paid such salary and allowances out of the Consolidated Fund as may be determined or approved by the Minister with the concurrence of the Minister in charge of the subject of Finance.”*

14. Whereas Section 5 of the Ordinance provides that

*“(1) In the exercise or performance of the powers or duties conferred or imposed by this Ordinance each elections officer shall be subject to the general supervision and control of the Commissioner.*

*(2) Subject to the general supervision and control of the Commissioner, each assistant returning officer and assistant elections officer may exercise or perform the powers or duties conferred or imposed by this Ordinance upon an election officer.”*

15. While the abovementioned provisions of the Act only establish supervision and control of the Commissioner, the Constitution under Articles 104F and 104G very clearly sets out that Returning Officers appointed in terms of the law are responsible and answerable to the Commission.

16. Article 104F of the Constitution provides,

*“(1) The Commission shall from time to time by notice published in the Gazette appoint by name or by office a person to be a Returning Officer to each electoral*



*district, and may appoint by name or by office one or more persons to assist the Returning Officer in the performance of his duties.*

(2) **Every Officer** appointed under paragraph (1) shall in the performance and discharge of such duties and functions as are assigned to him, **be subject to such directions as may be issued by the Commission and shall be responsible and answerable to the Commission** therefor.<sup>4</sup>

17. Article 104G provides that,

***All public officers performing duties and functions at any election or Referenda shall act in the performance and discharge of such duties and functions under the directions of the Commission and shall be responsible and answerable to the Commission*** therefor.<sup>5</sup>

18. As to how Article 104G may be interpreted and whether decisions of a Returning Officer can be regarded as decisions of the Commission itself, as the learned Deputy Solicitor General submitted, are questions which have already been considered by this Court.

19. A five-judge bench of this Court was previously confronted with these key questions before us, albeit in a context that is different to some extent. ***Ghany v. Dayananda Dissanayake, Commissioner of Elections and Others***<sup>6</sup> was an appeal from a writ application to the Court of Appeal praying for an order in the nature of a writ of certiorari quashing the declaration of election results, alleging irregularities at the counting of preferences, and an order in the nature of a writ of mandamus compelling a recount. The Court of Appeal, on a preliminary objection which contended the exact opposite to what

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<sup>4</sup> Emphasis added

<sup>5</sup> Emphasis added

<sup>6</sup> [2004] 1 Sri L.R. 17

is contended before us, went on to hold that jurisdiction of the Court of Appeal in relation to matters arising out of the exercise of powers by the Elections Commission as well as the Election Commissioner had been removed from the Court of Appeal to be vested in the Supreme Court by virtue of Article 104H of the Constitution.

20. Delivering the judgment for the Court, Mark Fernando, J, with the concurrence of Ismail, Edussuriya, Yapa and Wigneswaran, JJ, found the Court of Appeal to have erred in the said finding.
21. While the Counsel for the Petitioners sought to distinguish the **Ghany Case** on the basis that it related to a Returning Officer's refusal to recount, and not a rejection of nominations as with the cases before us—arguing that *sui juris* powers of the Returning Officer only arise after the closure of the polls, I do not see this distinction as a factor distinguishing the ratio the **Ghany Case** from the matters before us. No such distinction can be identified by the plain reading of Articles 104F and 104G. These two Articles remain the same throughout. The **Ghany Case** relates to a decision of a Returning Officer and the legal questions considered by the Court are substantially the same as what has been brought before us.
22. The preliminary objection in the **Ghany Case**, which the Court of Appeal upheld—and the five-judge bench of the Supreme Court rejected—as quoted in the Supreme Court judgment, reads as follows:

*"The Court of Appeal lacked jurisdiction to hear and determine this matter as in terms of Article 104H of the Constitution (introduced by the 17<sup>th</sup> Amendment to the Constitution) the jurisdiction had been transferred or removed to the Supreme Court*

*in relation to matters arising out of the exercise of powers by the Election Commissioner/Election Commission.”<sup>7</sup>*

23. As it is amply clear, this preliminary objection calls the Court to consider questions that are identical to that which is before us.
24. Fernando, J, in His Lordship’s judgment, was guided to a great extent by the language of Article 104A, which contains a limited constitutional ouster clause with respect to decisions, directions or acts of the *Election Commission*. Article 104A of the Constitution is as follows:

*“Subject to the jurisdiction conferred on the Supreme Court under paragraph (1) of Article 126, Article 104H and Article 130 and on the Court of Appeal by Article 144 and the jurisdiction conferred on any court by any law to hear and determine election petitions or Referendum petitions –*

- (a) *no court shall have the power or jurisdiction to entertain or hear or decide or call in question on any ground and in any manner whatsoever, any decision, direction or act of the Commission, made or done or purported to have been made or done under the Constitution or under any law relating to the holding of an election or the conduct of a Referendum as the case may be, which decisions, directions or acts shall be final and conclusive; and*
- (b) *no suit or prosecution or other proceeding shall lie against any member or officer of the Commission for any act or thing which in good faith is done or purported to be done by him in the performance of his duties or the discharge of his functions under the Constitution or under any law relating*

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<sup>7</sup> [2004] 1 Sri L.R. 17, at 20

*to the holding of an election or the conduct of a Referendum as the case may be.”*

25. Having referred to the same, His Lordship observed that,

*“This provision draws a sharp distinction between the acts of the Commission and the acts of its officers. In particular, the latter receive protection only in respect of acts done in good faith. That distinction militates against any general assumption that the acts of officers can be equated to, or deemed to be, acts of the Commission.”<sup>8</sup>*

26. His Lordship placed further emphasis on the language of Article 104H(1) which refers to matters *“that may arise in the **exercise by the Commission of the powers conferred on it..”***

27. It was held that,

*“Article 104H must be read with Article 104A(a). Read together, those two provisions manifest a clear intention to transfer to this Court a part of the writ jurisdiction of the Court of Appeal, namely, in relation to any matter arising in the exercise by the Election Commission of its powers, and also to make decisions, directions and acts of the Election Commission final and immune from judicial review except under Article 104H, 126(1) and 130. **Ex facie, neither Article applies to acts and omissions of the Commissioner of Elections, or of his officers.***

*To put it another way, Article 104H effects an ouster of the jurisdiction of the Court of Appeal only upon an exercise of the powers of the Election Commission, by the Commission itself. **Article 104H does not apply to an exercise of the power of the Election Commission by any other person.** The words “by the Commission” are words of limitation. If Parliament had intended that Article 104H should also*

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<sup>8</sup> [2004] 1 Sri L.R. 17, at 21-22

*apply to an exercise of those powers by the commissioner of Elections, it would have removed those words of limitation, so that Article 104H would have read: ... “in relation to any matter that may arise in the exercise of the powers conferred on the Commission by the Constitution or by any other law”, omitting the words “by the Commission” and “on it”.*

*Likewise, Article 104A(a) refers to “any decision, direction or act of the Commission”, and not to “any decision, direction or act in the exercise of the powers of the Commission”. The plain meaning of those provisions is that there is an ouster of the jurisdiction of the Court of Appeal only in respect of an exercise of power by the Election Commission itself....*

*To sum up, the subject-matter of the appellant’s writ application to the Court of Appeal was mainly, if not entirely, in respect of the alleged acts (and omissions) of officers of the Commissioner of Elections, and not in relation to decisions, directions, acts, orders or rulings of the Commissioner of Elections, He did not allege any exercise (by those officers or by the Commissioner of Elections) of the powers of the Election Commission. Those acts could not have been regarded ex facie as an exercise of the powers of the Commissioner of Elections and/or of the Election Commission...”<sup>9</sup>*

28. As it is amply clear from the above judgment, acts of the Commissioner of Elections himself—let alone that of his subordinate officers—are not always referable to the Commission itself.
29. Where the Commissioner or any other officer (such as Returning Officers) exercises powers vested by law in such office they hold, writ jurisdiction in respect of such acts remain with the Court of Appeal, unaffected by the provisions of Article 104H of the

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<sup>9</sup> [2004] 1 Sri L.R. 17, at 26-29 (Emphasis added)

Constitution. We see no reason to deviate from this five-judge bench decision of this Court.

## **CONCLUSION**

30. Considering the foregoing reasons, especially the judgment in ***Ghany v. Dayananda Dissanayake, Commissioner of Elections and Others***,<sup>10</sup> I uphold the preliminary objection raised by the learned Deputy Solicitor General. Application is accordingly dismissed.

***Application Dismissed.***

**JUDGE OF THE SUPREME COURT**

**MAHINDA SAMAYAWARDHENA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

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<sup>10</sup> [2004] 1 Sri L.R. 17