

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

In the matter of an application in terms of Articles 12 (1), 14 (1) (g) and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. EPIC Lanka (Private) Limited,
EPIC Techno Village,
No.158/` /A, Kaduwela Road,
Talangama, Battaramulla.

2. Dr. Nayana Darshana Prasad
Dehigama,
Executive Chairman & Managing
Director
EPIC Lanka (Private) Limited,
No.158/` /A, Kaduwela Road,
Talangama, IBattaramulla.

PETITIONERS

Application No:
SC/FR 94/18

Vs

1. Hon. S. B. Navinna,
Minister of Internal Affairs,
Wayamba Development and
Cultural Affairs,
Ministry of Internal Affairs,
Wayamba Development and Cultural
Affairs,
8th Floor, Sethsiripaya,
Battaramulla

2. Controller General
Department of Immigration and
Emigration of Sri Lanka,
“Suhurupaya”, Sri Subhuthipura
Road, Battaramulla.
3. Hon. Harin Fernando,
Minister of Telecommunication
and Digital Infrastructure and
Foreign Employment.
Ministry of Telecommunication and
Digital Infrastructure,
No.437A, Galle Road, Colombo 03
4. The Chief Executive Officer,
The Information and
Communication Technology
Agency of Sri Lanka,
No.160/24, Kirimandala
Mawatha,
Colombo 05.
5. The Information Technology
Agency of Sri Lanka,
No.160/24, Kirimandala
Mawatha,
Colombo 05.
6. De La Rue Lanka Currency and
Security Print (Private) Limited,
No.9/5, Thambaiah Avenue,
Off Independence Avenue,
Colombo 07.
7. Secretary,
Ministry of Internal Affairs,
Wayamba Development and
Cultural Affairs

8th Floor, Sethsiripaya,
Battaramulla.

8. Secretary,
Ministry of Telecommunication
and Digital Infrastructure,
No.437A, Galle Road, Colombo
03.
9. Hon. Ranil Wickremasinghe,
Prime Minister, Minister of
National Policies and Economic
Affairs,
58, Sir Earnest De Silva Mawatha
Colombo 7.
10. Hon. John Amarathunga,
Minister of Tourism Development
and Christian Religious Affairs,
200, 53 Vauxhall Lane,
Colombo 2.
11. Hon. Gamini Jayawickrema
Perera,
Minister of Budhasasana,
No.135, Sreemath Anagarika
Dharmapala Mawatha,
Colombo 07.
12. Hon. Ravindra Samaraweera
Minister of Sustainable
Development and Wildlife,
9th Floor, Sethsiripaya Stage I
Battaramulla.
13. Hon. Nimal Siripala de Silva,
Minister of Transport and Civil
Aviation.

7th Floor - Sethsiripaya Stage II
Battaramulla.

14. Hon. Mangala Samaraweera,
Minister of Finance & Mass Media
The Secretariat,
Colombo 1.
15. Hon. Thilak Marapana,
Minister of Foreign Affairs and
Development Assignments,
Ministry of Foreign Affairs,
Colombo 1.
16. Hon. S. B. Dissanayake,
Minister of Social Empowerment,
Welfare, and Kandyan Heritage,
1st Floor, Sethsiripaya, Stage II
Battaramulla.
17. Hon. W. D. J. Seneviratne,
Minister of Labour, Trade Union
Relations and Sabaragamuwa
Development
2nd Floor, Labour Secretariat,
Colombo 5.
18. Hon. Kabir Hashim,
Minister of Higher Education and
Highways,
18, Ward Place, Colombo 7.
19. Hon. (Dr.) Sarath Amunugama,
6th Floor, Sethsiripaya,
Battaramulla.
20. Hon. Rauf Hakeem,

Minister of City Planning and
Water Supply,
35, Lakdiya Medura
New Parliament Rd., Battaramulla.

21. Hon. Anura Priyadharshana Yapa,
Minister of Disaster Management
Vidya Mawatha, Colombo 7.
22. Hon. Susil Premajyantha,
Minister of Science, Technology &
Research,
3rd Floor – Stage I
Sethsiripaya, Battaramula.
23. Hon. (Dr.) Rajitha Senaratne,
Minister of Health Nutrition and
Indigenous Medicine,
Baddegana Wimalwansa Thero
Mw., Colombo 10.
24. Hon. Mahinda Samarasinghe,
Minister of Ports and Shipping,
19, Chaitya Rd., Colombo 1.
25. Hon. Vajira Abeywardena,
Minister of Home Affairs,
Independence Square, Colombo 7.
26. Hon. Rishad Bathiudeen,
Minister of Industry and Commerce
73/1, Galle Rd., Colombo 3.
27. Hon. Patali Champika Ranawaka,
Minister of Megapolis and
Western Development,
17th & 18th Floors, Suhurupaya,
Subuthipura, Battaramulla.

28. Hon. Mahinda Amaraweera,
Minister of Fisheries and Aquatic
Resources Development,
New Secretariat, Maligawatta,
Colombo 10.
29. Hon. Navin Dissanayake,
Minister of Plantation Industries
1th Floor, Sethsiripaya – Stage II
Battaramulla.
30. Hon. Ranjith Siyambalapitiya,
Minister of Power and Renewable
Energy, 72 Ananda Coomaraswamy m
Colombo 07.
31. Hon. Duminda Dissanayake,
Minister of Agriculture,
No.288, Sri Jayawardenapura
Mawatha, Rajagiriya.
32. Hon. Vijith Vijayamuni Zoysa,
Minister of Irrigation and Water
Resources Management,
No.11, Jawatte Road, Colombo 05.
33. Hon. P. Harison,
Minister of Rural Economy,
R.A.492, R.A.De Mel Mawatha
Colombo 3.
34. Hon. Lakshman Kiriella,
Minister of Public Enterprises and
Kandy Development,
Level 36, East Tower, World Trade
Center, Echelon Square,
Colombo 01.

35. Hon. Ranjith Maduma Bandara,
Minister of Public Administration
& Management and Minister of
Law & Order,
Independence Square, Colombo 07.
36. Hon. Gayantha Karunathilaka
Minister of Lands and
Parliamentary Reforms,
No.1200/6, Rajamalwatta AV.,
Battaramulla.
37. Hon. Sajith Premadasa
Minister of Housing and
Construction,
2nd Floor, “Sethsiripaya”,
Battaramulla.
38. Hon. Mahinda Samarasinghe,
Minister of Ports and Shipping,
No.19, Chaithya Road, Colombo 01.
39. Hon. U. Palani Digambaram,
Minister of Hill Country New
Villages, Infrastructure and
Community Development,
N.45, St. Michaels Road, Colombo 03.
40. Hon. (Mrs.) Chandrani Bandara,
Minister of Women and Child
Affairs,
115/2, Kotte-Bope Rd., Battaramulla.
41. Hon. (Mrs.)Thalatha Atukorala,
Minister of Justice,
Ministry of Justice, Colombo 12.

42. Hon. Akila Viraj Kariyawasam,
Minister of Education,
“Isurupaya”, Pelawatta, Battaramulla.
43. Hon. M. H. A. Haleem,
Minister of Posts, Postal Services and
Muslim religious Affairs,
6th & 7th Floors,
Posts Head Office Building,
D. R. Wijewardena MW., Colombo 1.
44. Hon. Faiszer Musthapha,
Minister of Provincial Councils and
Local Government,
No.330, Union Place, Colombo 02.
45. Hon. D. M. Swaminathan,
Minister of Prison Reforms,
Rehabilitation, Resettlement and
Hindu Religious Affairs,
No.356, Caralwill Place,
Galle Road, Colombo 03.
46. Hon. Chandima Weerakkody,
Minister of Skills Development and
Vocational Training,
“NipunathaPiyasa”, Elvitigala
Mawatha, Narahenpita, Colombo 05.
47. Hon. Dayasiri Jayasekara,
Minister of Sports,
No.9, Philip Gunawardena Road,
Colombo – 07.
48. Hon. Sagala Ratnayake,

Minister of Youth Affairs and
Southern Development,
Floor – 14, “Suhurupaya”,
Subuthipura Road, Battaramulla.

49. Hon. Mano Ganesan,
Minister of National Co-existence
Dialogue and Official Languages,
40, Buthgamuwa Road, Rajagiriya.
50. Hon. Daya Gamage,
Minister of Primary Industries,
6th Floor, Suhurupaya, Battaramulla.
51. Hon. Arjuna Ranatunge,
Minister of Petroleum Resources
Development,
No.80, Sir Earnest De Silva Mawatha,
Colombo 07.
52. Hon. Malik Samarawickrema
Minister of Development Strategies
and Internal Trade,
6th Floor, West Tower,
World Trade Centre, Colombo 01.
53. Field Marshal Hon. Sarath Fonseka,
Minister of Regional Development,
1090, Sri Jayawardenapura, Kotte.

Respondents, together with 1st and 3rd
Respondents being members of the Cabinet
of Ministers.

54. Mr. Sumith Abeysinghe
Secretary to the Cabinet of Ministers
Office of the Cabinet of Ministers

Republic Building, Sir Baron
Jayatilaka Mawatha, Colombo 01.

55. Eng. B. N. F. I. A. Wickramasuriya
Chairman, National Procurement
Commission
56. Prof. Mrs. Chitra Weddikkara
Member - National Procurement
Commission
57. Christy Perera
Member - National Procurement
Commission
58. M. Vamadevan
Member -National Procurement
Commission
59. Dr. Palitha Ekayayake
Member -National Procurement
Commission
All of at:
Block No.9, 2nd Floor, BMICH,
Buddhaloka Mawatha, Colombo 7.
60. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

BEFORE: Buwaneka.Aluwihare, PC, J
Nalin Perera, J
L.T.B.Dehideniya, J

COUNSEL: Harsha Fernando with Chamith Senanayake, Ruvendra Weerasinghe instructed by Jagath Thalgaswatte for the Petitioners.

Viraj Dayaratne, Addl. SG with Mahen Gopallawa, DSG for all the Respondents except the 6th Respondent.

Romesh de Silva, PC with Shanaka Amarasinghe and Niran Anketell instructed by Julius & Creasy for the 6th Respondent.

ARGUED ON: 31.05.2018

DECIDED ON: 26.06.2018

ALUWIHARE PC, J:

When this matter was taken up for support the learned President's Counsel for the 6th Respondent challenging the maintainability of this application, raised four preliminary objections which are as follows:

- (1) The Petitioner has suppressed material, in that the Petitioner had not made full disclosure of the earlier case filed on the same matter, namely SC FR Application No.447/2017.
- (2) The Petitioner's application is time barred.
- (3) The same matter has been urged before this Court earlier.
- (4) 2nd, 4th, 7th and 8th Respondents cited in this application are neither juristic nor natural persons and as such, this application is misconceived in law.

All parties were heard on the preliminary objections referred to above.

The learned Addl. Solicitor General representing the Respondents save for the 6th Respondent, submitted that he subscribes to the views expressed on behalf of the 6th Respondent as to the preliminary objections.

Of the objections raised, the 2nd objection raised on behalf of the 6th Respondent, was that this application was time barred.

It was the contention of the learned President's Counsel for the 6th Respondent that the Petitioner had invoked the jurisdiction of this court in terms of Article 126 of the Constitution and sought the same relief against the Respondents in a previous case; SC FR 447/17. It was pointed out that the subject matter and the reliefs claimed in the present application are identical to those in SC FR 447/17. When one peruses the petition filed in Application SC FR 447/17 and the petition of the instant Application, it is evident that save for paragraphs 11, 36 and 40, all other averments in the petition of SC FR 447/17 are reproduced verbatim in the petition of the present application. Even the relief prayed in both applications save for minor variations, is identical.

According to the Petition in the present application, the complaint in the main is that, the approval given by the Cabinet of Ministers in granting the e-MRP Project to the 6th Respondent as reflected in the Cabinet Memorandum dated 2nd November, 2017 (P9) and the Cabinet decision (P9A) "breaches and continues to breach" the Petitioners' fundamental rights guaranteed under Articles 12 (1) and 14 (1) (g) of the Constitution (Paragraph 35 of the Petition).

Paragraph 35 of the petition in the instant case corresponds to paragraph 34 of the petition in the case filed earlier, (SC FR 447/17) which are substantially the same. In the averment in paragraph 34, the Petitioner only alleges that the said action of the Cabinet of Ministers was in **“breach of the fundamental rights of the Petitioners”** and had not alleged a **“continuous breach”** as in the instant application. If the violation alleged by the Petitioners was a ‘continuous breach’ of their fundamental rights, I cannot see any valid reason for them not to have pleaded so in the SC FR Application 447/2017.

In paragraph 40 of the present petition, the Petitioners have admitted that they had invoked the jurisdiction of this court previously in respect of this matter in case No. SC FR 447/2017 which had been filed on the 4th December 2017. The Petitioners state (in paragraph 40) that when the matter was taken up for support on 8th March, 2018, the Hon. Attorney General challenged the maintainability of the said application and in the face of the objections so raised the Petitioners withdrew the said application reserving the right to file a fresh application.

As referred to earlier, the main complaint of the Petitioners is that the Cabinet of Ministers, without calling for open tenders, granted the e-MRP project to the 6th Respondent via direct contracting method by the Cabinet decision dated 7th November 2017 (P9A) pursuant to Cabinet Memorandum submitted by the Hon. Minister of Telecommunication and Digital Infrastructure the 3rd Respondent, dated 2nd November, 2017 (P9).

The Cabinet decision (P9A) without any ambiguity reflects that the Cabinet approval had been granted to engage the 6th Respondent to implement the

e-Passport project. The Petitioners have averred that they became aware of the Cabinet Memorandum dated 2nd November, 2017 (P9) on or about 23rd November, 2017.

It is on that premises aforesaid, that the Petitioners alleged, in SC FR application No.447/17, that the Cabinet Memorandum (P9) and the Cabinet decision (P9A) was in breach of the Petitioners' Fundamental Rights guaranteed under Articles 12 (1) and 14 (1) (g) of the Constitution. The SC FR 447/17 which was *pro forma* dismissed, had been filed on 5th December, 2017. The said application was well within the time stipulation of 30 days from the infringement alleged, prescribed under Article 126 of the Constitution to invoke the fundamental rights jurisdiction of this court.

The Petitioners by filing the present application had invoked the jurisdiction of this court on 12th March 2018 which is clearly outside the stipulation of time referred to above. They claim that the Petition is not time-barred as there is a continuous violation. However, in the same vein, the learned counsel for the petitioners contended that if open tenders are called for the e-MRP project even at this stage, the Petitioners are prepared to withdraw this application. Thus, what the Petitioners attempt to achieve is to re-open a process that reached its completion. This clearly demonstrates that the alleged violation, in contrast to what is claimed by the Petitioners, took place when the Cabinet of Ministers took the decision to engage the 6th Respondent for the project on 7th November 2017, roughly 4 months before filing the present application. As such I cannot agree with the argument of the learned counsel for the Petitioners, that the said Cabinet decision 'continues to breach' the Petitioners' fundamental rights.

As such I uphold the 2nd preliminary objection (time bar) raised on behalf of the 6th Respondent and hold further that this application cannot be maintained due to that reason.

In view of the finding above, I see no reason to consider other objections raised on behalf of the Respondents.

Accordingly, this application is dismissed and in the circumstance of this case I make no order as to costs.

JUDGE OF THE SUPREME COURT

Justice H.N.J Perera
I agree

JUDGE OF THE SUPREME COURT

Justice L.T.B. Dehideniya
I agree

JUDGE OF THE SUPREME COURT

