

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

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

SC Writ Application No.07/2020

A. L. M. Athaullah
Secretary General,
National Congress, South Road,
Akkaraipattu 01.

Petitioner

Vs.

1. Mr. Mahinda Deshapriya,
Chairman,
Election Commission.
2. Mr. N. J. Abeysekara,
Member,
Election Commission.
3. Professor Ratnajeewan Hoole,
Member,
Election Commission.

All of
Election Commission,
Election Secretariat,
Sarana Mawatha,
Rajagiriya.

4. Mr. J. S. D. M. Asanka
Abeywardana,
Returning Officer,
Electoral District of Trincomalee,
District Secretariat,
Trincomalee.
5. Mr. G. G. Ponnambalam,
Secretary,

Ahila Ilankai Tamil Congress,
'Congress House',
No. 120, Main Street,
Jaffna.

6. Mr. S. Arokkiyanayakam,
Secretary,
Akhila Ilankai Tamil Mahasabha,
No. 53, Pulavu Road,
Sampativu,
Trincomalee.
7. Mr. K. Thurairasasingham,
Secretary,
Ilankai Tamil Arasu Katchi,
No. 30, Martin Road, Jaffna.
8. Mr. Douglas Devananda,
Secretary,
Ealam People's Democratic Party,
No. 9/3, Station Road,
Colombo 04.
9. Mr. Akila Viraj Kariyawasam,
Secretary,
United National Party,
'Sirikotha',
No. 400, Kotte Road,
Pitakotte.
10. Rev. Battaramulle Seelarathana
Thero,
Secretary,
Janasettha Peramuna,
No. 185, Devala Road,
Thalangama South,
Battaramulla.
11. Mr. L. Nipunaarachchi,
Secretary,
Jathika Jana Balawegaya,
No. 464/20, Pannipitiya Road,
Pelawatta, Battaramulla.

12. Mr. N. Sivasakthi,
Secretary,
Tamil Makka! Thesiya Kuttani,
No. 26/10, First Lane,
Kandy Road, Vavuniya.
13. Mr. K. Sivarasa,
Secretary,
Social Democratic Party of
Tamil,
No. 294, Kandy Road, Jaffna.
14. Mr. Kumar Gunaratnam,
Secretary,
Frontline Socialist Party,
No. 553/B/2, Gemunu Mw.,
Udumulla Road, Battaramulla.
15. Mr. Sagara Kariyawasam,
Secretary,
Sri Lanka Podujana Peramuna,
No. 8/11, Robert Alwis Mw.,
Boralesgamuwa.
16. Mr. Mahinda Dewage,
Secretary,
Socialist Party of Sri Lanka,
No. 2/69, Melfet Estate,
Gemunupura, Kothalawala,
Kaduwela.
17. Mr. R. M. R. Maddumabandara,
Secretary,
Samagi Jana Balavegaya,
No. 347/A, Kotte Road,
Mirihana, Nugegoda.
18. Mr. Range Nimal Chandrasiri,
Leader,
Independent Group – 01,
No. 24, Sirimapura,
Trincomalee.
19. Mr. S. Vijayarethnam,
Leader,

Independent Group – 02,
No. 853, Pasal Mawatha,
Selvanayagapuram,
Trincomalee.

20. Mr. M. F. M. Arafath,
Leader,
Independent Group – 03,
No. 30/12, Kadakkarai Veedi,
Rahumaniya Nagar,
Kinniya 01.
21. Mr. M. L. Sugath Prasantha,
Leader,
Independent Group – 04,
No. 159/D, 6th Lane,
Sinhapura, Trincomalee.
22. Mr. T. Vamadeva,
Leader,
Independent Group – 05,
No. 72, Kannagipuram,
Ors Hill, Trincomalee,
23. Mr. A. H. Abdul Jawathu,
Leader,
Independent Group – 06,
No. 361/3, Kuttikarachchi,
Kinniya.
24. Mr. M. A. Muhammadu Lafeer,
Leader,
Independent Group – 07,
No. 127/27, Hijra Veediya,
Kinniya 03.
25. Mr. Muhammathu Ali Ajeeb,
Leader,
Independent Group – 08,
No. 66, Ward 03,
Pullumalai.
26. Mr. Ali Jawfar Mubarak,
Leader,
Independent Group – 09,

Annal Nagar, Kinniya 03.

27. Mr. A. M. Pajilkuththoos,
Leader,
Independent Group – 10,
No. 14, Hijra Veediya,
Kinniya 03.
28. Mr. S. Muhammad Riswan,
Leader,
Independent Group – 11,
Nagara Sabha Mawatha,
Kinniya 04.
29. Mr. G. K. Manoj Rangana,
Leader,
Independent Group – 12,
No. 35/B, Parakrama Mawatha,
Kanthale.
30. Mr. P. M. Ajimal,
Leader,
Independent Group – 13,
T. B. Jayah Mawatha,
Kinniya 03.
31. Mr. R. G. Premathilake,
Leader,
Independent Group – 14,
No. 694/4, Ralaela,
Kanthale.

Respondents

Before: Buwaneka Aluwihare PC J
Murdhu Fernando PC J
S. Thurairaja PC J

Counsel: Geoffery Alagaratnam PC for the Petitioner.
Viveka Siriwardana DSG for the 1st, 2nd, 4th Respondents.

M. U. M. Ali Sabry PC with Ruwantha Cooray and Amila Kumara instructed by Athula de Silva for the 15th Respondent.

Supported on: 10.07.2020

Order on: 11.10.2023

Order

Aluwihare PC J.,

- (1) The Petitioner invoked the jurisdiction of this court in terms of Article 104H of the Constitution and sought writs in the nature of *Certiorari* and *Mandamus* on the basis that the decision of the 4th Respondent to reject the nomination papers tendered by the Political Party the Petitioner represents, to contest the election of members to the Parliament from the electoral district of Trincomalee, is *ultra vires*.
- (2) The Petitioner supported this application for notices on the respondent and the court heard the submissions of the learned President's Counsel for the Petitioner, the learned President's Counsel for the 15th Respondent and the learned Deputy Solicitor General for the 1st, 2nd and the 4th Respondents.
- (3) The 'National Congress,' a political party recognized under and in terms of Section 7(4)(b) of the Parliamentary Elections Act No. 01 of 1981 (hereinafter referred to as the 'Parliamentary Elections Act') tendered their nomination paper for the Parliamentary Election of 2020 which was rejected on the basis that the oath/affirmation set out in the Seventh Schedule of the Constitution was not duly tendered.

- (4) The Petitioner, the Secretary General of the ‘National Congress’ by his petition sought a declaration that the determination made by the 4th Respondent, Returning Officer of the Electoral District of Trincomalee to reject the nomination paper of the ‘National Congress’ to be illegal, void and of no effect or avail in law on the following grounds;
- a) The 4th Respondent has no power or authority under the Parliamentary Elections Act No. 01 of 1981 to reject the said nomination paper on the grounds set out in the letter marked ‘P3a’ and ‘P3b’ and as such the decision is *ultra vires*,
 - b) The said decision is *ex facie* bad in law and unsupported by evidence and *ultra vires*,
 - c) *Ex facie* the nomination paper has been submitted by the National Congress in compliance with the law and as such the said determination of the 4th Respondent is unsupported by evidence and unreasonable in all the circumstances of the case,
 - d) The said determination of the 4th Respondent has been occasioned by the failure to take into account relevant circumstances and is therefore unsupported by evidence,
 - e) The said decision of the 4th Respondent is arbitrary, unreasonable, illegal, in breach of the principles of natural justice and contrary to legitimate expectations and need for accountability and transparency,
 - f) The 4th Respondent has failed to pose the correct question, namely; as to whether the said nomination paper had been submitted in accordance with the law and thereby misdirected himself and fallen into the further error of failing to take into account all the relevant circumstances,
 - g) The said determination is vitiated by the failure to give reasons for arriving at the said decision,
 - h) The said decision is in breach of the 4th Respondent’s duty to advance the franchise,

- i) The said rejection had been occasioned by the failure to properly construe the terms of the said nomination paper and as such is vitiated by an error of law,
 - j) The said rejection gravely undermines the free and unfettered exercise of the choice vested in the people in the exercise of their franchise.
- (5) It was contended on behalf of the Petitioner that his party submitted the nomination paper with the names of 7 candidates to be elected to the Parliament at the Parliamentary Election of 2020 from the Electoral District of Trincomalee. It was pointed out that the nomination paper was as required by the law and that each of the seven candidates have expressed their written consent and subscribed their respective oath or affirmation in the Form set out in the Seventh Schedule to the Constitution and endorsed in the said nomination paper. The nomination paper was delivered to the 4th Respondent by the first named candidate who is the authorized agent before the expiry of the nomination period on 19th March 2020.
- (6) After the closure of the nomination period the 4th Respondent had declared that the nomination paper of the National Congress was rejected. The 4th Respondent had issued a letter dated 19th March 2020 both in Sinhala and Tamil marked 'P3a' and 'P3b' respectively. The same states that, acting under Section 19(2) of the Parliamentary Elections Act, which requires the returning officer to inform the secretary or the group leader who submitted the nomination paper of the fact of such rejection. The letter also states that the nomination paper was rejected under Section 19(1)(d) of the Parliamentary Elections Act for not fulfilling the requirements under Section 15(2).
- (7) Section 15(2) requires that the written consent of each candidate to be nominated and an oath or affirmation in the Form set out in the Seventh

Schedule to the Constitution by every such candidate shall be endorsed on the nomination paper.

- (8) Section 19(1)(d) of the Act, empowers the returning officer to reject any nomination paper where the consent of one or more candidates nominated or the oath or affirmation in the form set out in the Seventh Schedule to the Constitution have not been endorsed on the nomination paper.
- (9) It was contended that the Petitioner and his political party were not given an adequate explanation of the reason or the reasons for the rejection. By letter marked 'P4' dated 20th March 2020 the Petitioner had requested for the specific reason in writing for the rejection of the nomination paper and requested for a certified copy of the nomination paper submitted by his party. He had not received a reply to this letter and the Petitioner states that by the fax dated 23rd April 2020 marked 'P8' addressed to the 1st Respondent he had again requested a certified copy of the nomination paper submitted by his party. The letter had been followed by an email on 24th April 2020 to the same effect by the Petitioner. These communications had not received a reply.
- (10) The Petitioner had handed over a letter dated 1st May 2020 to the 1st Respondent *inter alia* drawing his attention to the letters marked 'P4' and 'P8' referred to above. By this letter marked 'P9' the Petitioner had appealed to the Election Commission to review the 4th Respondent's decision to reject the nomination paper and to allow the party to contest the Parliamentary Election, as the party had filed its nomination paper in compliance with the law. The Petitioner, however, had not received a reply to this letter either.
- (11) By letter dated 3rd June 2020 marked 'P10' addressed to the 1st, 2nd and 3rd Respondents respectively the Petitioner had demanded from the Election Commission to reconsider the 4th Respondent's decision and permit the

- National Congress to contest the Parliamentary Election. He had further demanded a certified copy of the nomination paper and connected documents tendered by the National Congress. The letter too had not received a response.
- (12) As enumerated above the Petitioner had made several requests for a certified copy of the nomination paper submitted by the National Congress and a detailed explanation of the reason for rejection of the nomination paper, from the 4th Respondent and later from the 1st, 2nd and 3rd Respondents.
- (13) By virtue of Section 19(1)(d) of the Parliamentary Elections Act the Returning Officer has the authority to “*examine the nomination papers received by him and reject any nomination paper.... where the consent of one or more candidates nominated or the oath or affirmation, in the form set out in the Seventh Schedule to the Constitution, of one or more candidates, had or have not been endorsed on the nomination paper.*” Section 19(2) specifically states that the decision of the returning officer to reject such nomination paper shall be final. There is no explicit requirement for the returning officer to further explain the reason for rejecting a nomination paper. Section 19(2) only requires “*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.*”
- (14) The nomination paper submitted by the Petitioner’s party, the ‘National Congress’ was submitted to court by the Election Commission, and we have had the opportunity of examining the same. According to our observations the nomination paper is defective due to two grounds;

1. The 7th Schedule to the Constitution requires the respective candidate to either '*declare and affirm*' or '*swear*'. Thereby the requirement is either to submit 'an oath' or in the alternative, 'an affirmation'. The omission to strike through the unnecessary words and specify whether it is an oath or an affirmation that is being made has rendered the nomination paper submitted by the Petitioner's political party defective.
 2. Section 12(3) of the Oaths and Affirmations Ordinance No. 09 of 1895 (as amended) states that any oath or affirmation "*shall state truly in the jurat or attestation at what place and what date the same was administered or taken...*" The failure to fulfill the requirement of stating the place at which the oath or affirmation was administered or taken has rendered the nomination paper submitted by the Petitioner's political party defective.
- (15) On these grounds it is evident that the nomination paper submitted by the Petitioner is defective and warrants rejection. As mentioned before, the returning officer is bound to inform the fact of rejection to the respective secretary of the party or the group leader of the independent group, but there is no explicit requirement for the returning officer to spell out the reason for rejecting the nomination paper.
- (16) As the candidacy at an election involves not only the rights of the candidates but also the rights of the electors, transparency and specificity may very well be virtues to uphold. While stating the provisions on whose authority a nomination paper is rejected, mentioning the exact grounds for the rejection, where possible, may serve to demonstrate to the candidates that such rejection was done on justifiable grounds. It may very well settle the minds of the candidates and prevent the need for litigation such as the present matter.

(17) Be that as it may, in the present application the returning officer has carried out the duties recumbent on him and the Petitioner has been duly notified. On such observation, notice is refused.

JUDGE OF THE SUPREME COURT

Murdhu Fernando PC J

I agree.

JUDGE OF THE SUPREME COURT

S. Thurairaja PC J

I agree.

JUDGE OF THE SUPREME COURT