

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

In the matter of an Application under and in terms
of Article 126 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

1. Ameer Ismail,
37B, Boswell Place,
Colombo 06.
2. Punyadasa Edussuriya,
18/225, Dabare Mawatha,
Colombo 05.
3. Indra De Silva, (*Expired on 31st December 2015*)
398/B Eksath Mawatha,
Kalapaluwawa,
Rajagiriya.

Petitioners

SC FR Application No.277/2010

Vs.

1. Mrs. Luckshmi Jayawickrama,
Former Director-General,
Commission to Investigate Allegations of Bribery
or Corruption,
36, Malalasekara Mawatha,
Colombo 07.
- 1A Ganesh Rajendra Dharmawardana,
Director General,
Commission to Investigate Allegations of
Bribery or Corruption,
36, Malalasekara Mawatha,
Colombo 07.
- Added 1AA Mrs. Dilrukshi Dias Wickramasinghe, P.C.
Director General,
Commission to Investigate Allegations of
Bribery or Corruption,
36, Malalasekara Mawatha,
Colombo 07.
2. Ms. E.D. Kumudu,
Deputy Director General,
Commission to Investigate Allegations of Bribery
or Corruption,
36, Malalasekara Mawatha,
Colombo 07.

3. Lalith Weerathunga,
Secretary to H.E. the President,
Presidential Secretariat,
Colombo 01 .

ADDED (3A) P.B. Abeykoon,
Secretary to H.E. the President,
Presidential Secretariat,
Colombo 01.

4. Ms. Sudharma Karunaratne
Former Director General (Budget)
Department of National Budget, Ministry of
Finance and Planning,
Colombo 01.

5. The Hon. Attorney General,
Attorney-General's Department,
Colombo 12.

6. Ms. Chandra Ekanayaka
Director General (Budget),
Department of National Budget,
Ministry of Finance and Planning,
Colombo 01.

Respondents

BEFORE : K. Sripavan, C.J.
Upaly Abeyrathne, J.,
Anil Gooneratne, J.

COUNSEL First Petitioner in person

Faisz Musthapa P.C. with Riad Ameen with Maduka
Perera for the 2nd Petitioner.

Dr. Avanti Perera Senior State Counsel for the 3A
Respondent.

Disna Gurusinghe for the 1AA Respondent

Kalinga Indatissa P.C. with Mahesh Senaratne for the 1st
and 2nd Respondents.

ARGUED ON : 03.06.2016

WRITTEN SUBMISSIONS

FILED ON : 20.06.2016 by the Petitioner
24.06.2016 by the Respondents

DECIDED ON : **07.09.2016**

K. SRIPAVAN, C.J.,

The First Petitioner served as the Chairman and the Second and Third Petitioners as Members of the “Commission to Investigate Allegations of Bribery or Corruption.” The Petitioners assumed Office as Chairman and Members of the Commission on 29.03.2005 and served for a full term of office until 28.03.2010. The Petitioners state that the subject matter of this application relates to:-

- (a) Non-payment of the benefit of the fuel allowance of 250 Litres per month as per the Presidential directive **dated 24.01.2001** from February 2009 until 28.03.2010; and*
- (b) Non-payment of arrears of the increase in salary from 01.01.2006 up to the end of January 2009 pursuant to the **Parliamentary determination** of 29.01.2009 (emphasis added)*

The Petitioners therefore sought, inter alia,

- (a) a declaration that the Petitioners are entitled to have their arrears of salary from 01.01.2006 up to the end of January 2009 computed and paid without taking into account the special allowances and the rent allowances.
- (b) a declaration that the Petitioners are entitled to the payment of arrears of increased salary in terms of the Parliamentary determination of 29.01.2009 for the period of 01.01.2006 to the end of January 2009 amounting to Rs. 1,268,545/= in respect of the First Petitioner and Rs. 1,301,845/= in respect of the Second and the Third Petitioners.

On 13.07.2010, the Petitioners filed an amended Petition dated 08.07.2010. This Court on 27.07.2010 granted leave to proceed for the violation of the Petitioners’ fundamental rights guaranteed by Article 12(1) of the Constitution. In his Written Submissions filed on 20.06.2016 the First Petitioner states as follows :-

*“The non-payment of the fuel allowance of 250 Litres per month as per the Presidential directive **P4** dated 24.01.2001 from February 2009 until 28.03.2010 was settled in Court on 08.12.2010.”*

Thus, as averred in paragraph 23 of the amended Petition dated 08.07.2010, the only matters to be considered by Court are as follows:-

- (a) the non-payment of the aforesaid monthly allowances payable to the Chairman and Members of all the Commissions referred to in Article 41B of the Constitution in terms of the determination marked **P3** from February 2009 until 28.03.2010; and*
- (b) the non-payment of arrears of the increase in salary from January 2006 up to the end of January 2009 pursuant to the aforesaid Parliamentary determination dated 29.01.2009 (**P5**);*

The Resolution moved in Parliament by Hon. Ranil Wickramasinghe and marked '**P3**' dated 04.06.2002 reads thus:-

“That this Parliament hereby determines that a monthly allowance of Rs. 25,000/= each be paid to Chairman of Commissions referred to in Article 41B of the Constitution of the Democratic Socialist Republic of Sri Lanka.

That this Parliament hereby determines that a monthly allowance of Rs. 20,000/= each be paid to the Members of the Commissions referred to in Article 41B of the Constitution of the Democratic Socialist Republic of Sri Lanka.”

Article 41B of the Constitution, as at the date of the said Resolution marked **P3** referred to the following Commissions :

- (a) Human Rights Commission*
- (b) Commission to Investigate Allegations of Bribery or Corruption*
- (c) Police Commission*
- (d) Public Service Commission; and*
- (e) Administrative Appeals Tribunal.*

Accordingly, when the Petitioners assumed office on 29.03.2005, they became entitled to the following salary and allowances as per paragraph 12 of the written submissions of the 3A, 5th and 6th Respondents

	<u>Chairman</u>	<u>Members</u>
(i) Salary	Rs. 31,715/=	Rs. 29,815/=
(ii) Fuel Allowance (Cash equivalent to 250 Litres)	Rs. 20,000/=	Rs. 20,000/=
Rent Allowance	Rs. 4,000/=	Rs. 4,000/=
Monthly Allowance	<u>Rs. 25,000/=</u>	<u>Rs. 20,000/=</u>
Total	Rs. 80,715/=	Rs. 73,815/=
	=====	=====

However, on 29.01.2009 the Parliament, acting under Section 2(7) of the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994 (the English Version of the said Parliamentary determination is marked (P5C)) **resolved as follows :-**

“... that the salaries and allowances payable to the Chairman and the Members of the Commission to Investigate Allegations of Bribery or Corruption shall be as follows with effect from 01.01.2006. (emphasis added)

	<u>Chairman(Full time)</u>	<u>Members</u>
(i) Salary	Rs. 66,000/=	Rs. 65,000/=
(ii) Fuel Allowance	<u>Rs. 14,400/=</u>	<u>Rs. 12,000/=</u>
Total	Rs. 80,400/=	Rs. 77,000/=
	=====	=====

The Parliament further resolved that 50% of the increased salary (excluding allowances) should be paid with effect from 01.01.2006 and the full salary inclusive of the balance 50% with effect from 01.01.2007 and that the salaries and allowances to be determined by Parliament by this resolution **should be substituted for the salaries and allowances determined by Resolutions previously passed in Parliament in respect of Chairman and Members of the Commission to Investigate Allegations of Bribery or Corruption.”** (emphasis added).

It is a cardinal principle of interpretation, that the words must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning unless there is something in the object to suggest to the contrary. It is said that the words themselves best declare the intention of the law giver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by Parliament and not to ignore them. Bearing in mind, the aforesaid principle of construction, the expression “**should be substituted for the salaries and allowances determined by resolutions previously passed in Parliament in respect of Chairman and Members of the Commission**” must be given a purposive interpretation.

The Petitioners at paragraph 11 of the amended Petition states that salaries and other allowances determined by Parliament before the Petitioners assumed office on 29.03.2005 were as follows:-

	<u>Chairman</u>	<u>Members</u>
(i) Salary	Rs. 31,715/=	Rs. 29,815/=
(ii) Fuel Allowance	Rs. 7,000/=	Rs. 7,000/=
(iii) Rent Allowance	Rs. 4,000/=	Rs. 4,000/=
(iv) Monthly Allowance	<u>Rs. 25,000/=</u>	<u>Rs. 20,000/=</u>
(v) Total	Rs. 67,715/=	Rs. 60,815/=
	=====	=====

Thus, the Petitioners do not become entitled to receive the Rent Allowance and Monthly Allowance referred to above in view of the Resolution marked **P5C**, with effect from 01.01.2006. The Fuel Allowance was increased to Rs. 14,400/= and Rs. 12,000/= to the Chairman and the Members respectively.

It is thus observed that the Gross Payment per month is increased from Rs. 67,715/= to Rs. 80,400/= to the Chairman; and the other two Members from Rs. 60,815/= to Rs. 77,000/=. The words used in the Parliamentary Determination at **P5C** are “**full salary inclusive of the balance 50%** “ and not “**the full salary in addition to the balance 50%**” (emphasis added).

The Petitioners thus become entitled only to the 50% of the increased salary with effect from 01.01.2006 and not to any other allowances they drew previously, except the Fuel Allowance.

I would like to mention that in terms of Section 2(7) of the Commission to Investigate Allegation of Bribery or Corruption Act No. 19 of 1944, the Salaries of the Commission Members cannot be diminished during their term of office. The said Act does not speak of granting of any allowances to the Petitioners. Hence, the Petitioners cannot claim as of right any other allowances other than the Fuel Allowance as determined by Parliament and evidenced by **P5C**. The Parliament in its wisdom thought it fit to do away with the payment of Rent Allowance and Monthly Allowance with effect from 01.01.2006 but increased the Fuel Allowance to Rs. 14,400/= for the Chairman and to the other members to Rs. 12,000/= respectively. It is no part of the duty of the Court to describe it in a different way and give any other interpretation to the words “substituted for the salaries and allowances”.

The allowances payable to the Chairman and the Members of the Commission with effect from 01.01.2006 is restricted to only one allowance, namely the “Fuel Allowance”. The Petitioners are not entitled to claim any other allowances with effect from 01.01.2006 other than “Fuel Allowance”.

The Parliament draws a distinction between the salary and the allowance. According to P5C, 50% of the salary increase was to be paid with effect from 01.01.2006 and the balance 50% of the salary was to be paid with effect from 01.01.2007. The Chairman’s salary increase is from Rs. 31,715/= to Rs. 66,000/=. The salary difference is Rs. 34,285/= and 50% of the said amount of Rs. 34,285/= is Rs. 17,142/50.

In the same way, the salary increase of the other two Members was from Rs. 29,815/= to Rs. 65,000/=. The salary difference is Rs. 35,185/= and 50% of the said amount is Rs. 17,592.50.

Thus, the salaries of the Chairman and Members are as follows :

	<u>With effect from 01.01.06</u>	<u>With effect from 01.01.07</u>
Chairman (Salary)	Rs. 31,715/=	Rs. 66,000/=
		=====
50% increase	<u>Rs. 17,142.50</u>	
Total	Rs. 48,857.50	
	=====	
Members	Rs. 29,815/=	Rs. 65,000/=
		=====
50% increase	<u>Rs. 17,592.50</u>	
Total	Rs. 47,407.50	
	=====	

Learned Senior State Counsel however, contended that even though the document P5C referred to the Fuel Allowance of the Chairman and the Members of the Commission as Rs. 14,400/= and Rs. 12,000/= respectively, the Petitioners were paid cash, equivalent to 250 Litres of fuel per month as shown in the Presidential directive marked **P4**. I agree with the submissions of the Learned Senior State Counsel that the Petitioners cannot get Fuel Allowance both from the Presidential directive and from the Parliamentary resolution.

Accordingly, the salary and the Allowance payable to the Chairman and the Members are as follows :-

With Effect From 01.01.2006

Salary

Chairman	Rs. 48,857.50 +	Cash equivalent of 250 Litres per month Instead of Rs. 14,400/= as Fuel Allowance
Members	Rs. 47,407.50 +	Cash equivalent of 250 Litres per month Instead of Rs. 12,000/= as Fuel Allowance

With Effect From 01.01.2007

Salary

Chairman	Rs. 66,000/= +	Cash equivalent of 250 Litres per month Instead of Rs. 14,400/= Fuel Allowance
Members	Rs. 65,000/= +	Cash equivalent of 250 Litres per month Instead of Rs. 12,000/= Fuel Allowance

Since the Fuel Allowance of 250 Litres per month as per the directive **P4** dated 24.01.2001 from February 2009 until the Petitioners ceased to hold office (i.e. 28.03.2010) has been paid, the Petitioners are not entitled for any cash allowance, in respect of fuel. I therefore

hold as follows:-

- (i) The First Petitioner's salary with effect from January 2006 would be Rs. 31,715/= + Rs. 17,142/50 per month until December 2006.
The Second and the Third Petitioners' salary with effect from January 2006 would be Rs. 29,815/= + Rs. 17.592/50 per month until December 2006.
- (ii) The First Petitioner's salary with effect from January 2007 would be Rs. 31,715/= + Rs. 34,285/= per month until December 2007.
The Second and the Third Petitioners' Salary with effect from January 2007 would be Rs. 29,815/= + Rs. 35,185/= per month until December 2007.
- (iii) The First Petitioner's salary with effect from January 2008 until 28.03.2010 would be Rs. 66,000/= per month. The Second and the Third Petitioners' salary from January 2008 until 28.03.2010 would be Rs. 65,000/= per month.
- (iv) The Petitioners are not entitled for any monthly allowances, other than the Fuel Allowance with effect from 01.01.2006 which has already been settled as per the Presidential directive **P4** dated 24.01.2001 from February 2009 until 28.03.2010.

Any non-payment of the Petitioners' salary as directed in (i), (ii), (iii) and (iv) referred to above violates the Petitioners' fundamental rights enshrined in Article 12(1) of the Constitution. The Court therefore directs the 1st to 4th and 6th Respondents to comply with the payment of the Petitioners' salary in the manner provided above within a period of three months. If any over payments were made to the Petitioners, such over payments may be recovered from the Petitioners.

CHIEF JUSTICE

UPALY ABEYRATHNE, J.

I agree.

JUDGE OF THE SUPREME COURT.

ANIL GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT.

