

**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 Prohibition, 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. 11/2024

1. Pararajasingam Uthayarasa
No. 148,
Station Road,
Varava,
Puliyakulam,
Vavuniya.
2. Gurunathapillai Vijendrarathnam
No. 384/3,
Mannar road,
Veppamkulam,
Vavuniya.
3. Abdul Gafoor Kaleefath Subihan
Karadukuli,
Maradakachchi,
Mannar.

PETITIONERS

-Vs-

1. R. M. A. L. Rathnayake
Chairman,
Election Commission.
2. M. A. P. C. Perera
Member,
Election Commission.
3. Ameer Faaiz
Member,
Election Commission.
4. Anushya Shanmuganathan
Member,
Election Commission.
5. Prof. Lakshman Dissanayake
Member,
Election Commission.

The 1st to 6th Respondents above all of,
Election Secretariat,
P.O. Box 02,
Sarana Mawatha,
Rajagiriya.

6. A. P. Sarathchandra
Returning Officer,
District Secretariat,
Vavuniya.
7. Dr. Nihal Abeysinghe

General Secretary,
National People's Power,
No. 464/20,
Pannipitiya Road,
Pelawatta,
Battaramulla.

8. Palitha Range Bandara
General Secretary,
United National Party,
Sirikotha,
No. 400,
Kotte Road,
Pitta Kotte,
Sri Jayewardenepura.
9. Sagara Kariyawasam
General Secretary,
Sri Lanka Podujana Peramuna,
No. 1316,
Nelum Mawatha,
Jayanthipura.
10. Dayasiri Jayasekera
General Secretary,
Sri Lanka Freedom Party,
No. 307,
T. B. Jaya Mawatha,
Colombo 10.
11. Kabir Hasheem
General Secretary,

Samagi Jana Balawegaya,
No. 592,
Kotte Road,
Sri Jayewardenepura Kotte.

12. P. D. K. K. P. Liyanage
General Secretary,
Sri Lanka Labour Party,
No. 07,
Summer Place,
Colombo 08.
13. Ragavan Chadrahasan
Independent Group,
15/8,
2nd Lane,
Kaali Temple Road,
Vavuniya.
14. Ilyas Mohomed Surais
Independent Group,
No. 48A,
Vannankulam Road,
Mulathivu.
15. Chandrakanthi Murali
Independent Group,
No. 21/29,
Barathi Road,
Koomankulam,
Vavuniya.

16. Devarasa Sivarasa
Independent Group,
No. 417/4b,
Mannar Road,
Vepankulam,
Vavuniya.
17. Abdul Rahaman Abdul Rahim
Independent Group,
No. 17/3,
Computer Center Road,
Moor Road,
Mannar.
18. Thajin Mohomed
Independent Group,
Kashmere Road,
Uppukulam South,
Mannar.
19. Abdul Rasool Mohomed Lariff
Independent Group,
No. 22,
05th Lane,
Vepankulam,
Vavuniya.
20. Ibrahim Sayam Niram Mohideen
Independent group,
3rd Lane,
Vepankulam,
Vavuniya.

21. Nesa Rasa Sangeethan
Independent group,
3rd Circuit,
Muliyavalai.
22. Thanabalasingam Ithayalal
Independent Group,
No. 158,
2nd Lane,
Vandari Kulam.
23. Badurdeen Muhamathu Rifkan
Independent Group,
Lebbai Road,
Tharapuram.
24. Ponnambalam Kugathan
Independent Group,
Silwathi South,
Mulathivu.
25. Subramaniam Krishanthi
Independent Group,
No. 129,
Ukkilam Kulam,
Milveedi,
Vavuniya.
26. Selvanayagam Anandavaran
Independent group,
No. 119,

Aladi Veedi,
Thonikal,
Vavuniya.

27. Abdul Rahim Mohomed Jeroosh
Independent Group,
No. 330,
Mannar Road,
Pattanichip,
Paliyangkulam,
Vavuniya.
28. Noordeen Mohomed Rasmin
Independent Group,
No. 147/4,
3rd Lane,
Pattakadu,
Vavuniya.
29. Abdul Riyadh Tharapuram
Independent Group,
Mannar.
30. Sabaideen Mohomed Safran
Independent Group,
No. 22/11,
FB, RDS Road,
Vepankulam,
Vavuniya.
31. Baurdeen Mohomed Faaiz
Independent Group,

No. 88/B,
Mosque Road,
Pattakadu,
Vavuniya.

32. Abdul Karder Modasiq
Independent Group,
Girls School Road,
Erukalampity,
Mannar.
33. Nadarasa Devakrishnan
Independent Group,
Aasikulam,
Vavuniya.
34. Mehendirasa Mayoathan
Independent Group,
31B,
Mill Road,
Vavuniya.
35. Jeyarathnam Siranga
Independent Group,
Mannar Road,
Vapankulam,
Vavuniya.
36. Kanagalaingam Karunathan
Independent Group,
Vandara Vanni,
Otti Sutan,

Mulathivu.

37. Vinayagmoorthy Sasitharan
Recognised Agent,
Eros Democratic Front,
No. 49/52 E,
Temple Road,
Kurumankadu.
38. Aelathambi Kamalakan
Recognised Agent,
Equal Ground,
Omadiyamadu,
Mankemi.
39. Thirusangunathan Vijayan
Recognised Agent,
Patriotic People's Power,
Puttlam Road,
Thiliba,
Chillaw.
40. Rassiah Selvarasa Chandrakumar
Recognised Agent,
Tamil Liberation Alliance,
No. 14A,
Mannar Road,
Kurumang Kadu,
Vavuniya.
41. Pakeer Mohommadu Mujeebur Rahuman
Recognised Agent,

National Front for Good Governance,
Koomankulam,
Chilawathurai.

42. Hon. Attorney General,
Attorney General's Department,
No. 159,
Sanchi Arachchi Waththa,
Colombo 12.

RESPONDENTS

BEFORE : **P. PADMAN SURASENA, J.**
A. L. SHIRAN GOONERATNE, J. &
ACHALA WENGAPPULI, J.

COUNSEL : Ali Sabry, PC, with Namiq Naffath instructed by Sanath
Wijewardane for the Petitioners.

Yuresha de Silva, DSG, for the 1st -6th & 42nd Respondents.

ARGUED ON : 22-10-2024

DECIDED ON : 30-01-2025

P. PADMAN SURASENA, J.

The 1st 2nd and 3rd Petitioners are all members of the said political party. It is a recognised political party for the purpose of elections in terms of the Parliamentary Elections Act No. 01 of 1981 as amended. The Election Commission called for nominations for the parliamentary election 2024 for which the nomination period was set as the period from 04th October 2024 to 12 noon on 11th October 2024. The Petitioners being desirous of handing over the Nomination Papers for the said election

had decided to submit the Nomination Paper for the candidates contesting from the said political party from Vanni district.

The 1st Petitioner is the authorized agent of Democratic National Alliance for the electoral district of Vanni for the purpose of submitting the Nomination Paper on behalf of the said political party in terms of Section 15 (4) of the Parliamentary Elections Act. Therefore, he (the 1st Petitioner) came to the District Secretariat office on the 10th October 2024, accompanied by the 2nd and 3rd Petitioners for the purpose of submitting the Nomination Paper on behalf of the said party for the Vanni electoral district.

Upon arrival at the registration/reception desk at the District Secretariat, the 1st Petitioner handed over the Nomination Paper and supporting documents to the 2nd Petitioner to hold the same, to enable him (the 1st Petitioner) to fill in the information, on a sheet at the counter. At the same time, an officer had directed the 1st to 3rd Petitioners to go towards the table of the 6th Respondent which was about 10 feet away from the afore-said registration/reception desk to hand over the Nomination Paper to the 6th Respondent Returning Officer.

While the 1st Petitioner was still filling the information, the 2nd and 3rd Petitioners proceeded to the table of the 6th Respondent Returning Officer. Upon arrival at that table, the 6th Respondent signalled the 2nd Petitioner to sit on the sole chair available in front of him. The 6th Respondent Returning Officer then gestured the 2nd Petitioner to hand over the Nomination Paper to him. It was at that time, responding to the signalling/gesture of the 6th Respondent that the 2nd Petitioner had handed over the Nomination Paper and the supporting documents to the 6th Respondent Returning Officer. It was then that the 6th Respondent had requested the National Identity Card of the 2nd Petitioner.

The 1st Petitioner having finished filling the information in front of the help desk by that time, immediately intervened at the 6th Respondent's counter claiming that he is the authorized agent of the said Democratic National Alliance. The 1st Petitioner at that time, also claimed that he was the authorised agent to hand over the Nomination

Paper and the supporting documents on behalf of the said political party. It is to be noted that the 1st Petitioner's name appears 1st in the list of candidates on the Nomination Paper.

In the afternoon on the same day, the 6th Respondent Returning Officer had informed the 1st Petitioner that the Nomination Paper was rejected on the basis that it was not handed over as per Section 15 (4) and (5) of the Parliamentary Elections Act. Let me reproduce below these two Sections:

Section 15

(4) Such Nomination Paper shall be delivered to the returning officer at his office during normal office hours within the nomination period by the secretary of a recognized political party or by the candidate whose name appears first in such nomination paper (hereinafter referred to as the "authorised agent") in the case of a recognised political party, or by the group leader in the case of an independent group.

(5) Where, due to any reason whatsoever, the secretary of a recognised political party or the authorised agent or the group leader is unable to deliver a nomination paper, the candidate whose name appears second on such nomination paper shall deliver such nomination paper to the returning officer as required by subsection (4).

The Petitioners claiming the rejection to be Ultra vires and/or illegal and/or unreasonable in the special circumstances of this case, had prayed inter alia for the following relief in their Petition:

- b). A mandate in the nature of Writ of Certiorari quashing the decision of the 6th Respondent set out in the letter marked "**P 3**", rejecting the Nomination Paper on behalf of Democratic National Alliance for the electoral District of Vanni;*

- c). *A mandate in the nature of Writ of Prohibition preventing the 1st to 6th Respondents and/or any one or more of them from proceeding with the parliamentary elections in the electoral district of Vanni scheduled to be held on the 14th of November 2024 without accepting and/or receive as valid the nominations submitted by the Petitioners on behalf of Democratic National Alliance for the electoral district of Vanni marked as "**P 1**" to the Petition;*
- d). *A mandate in the nature of Writ of Mandamus on the 1st to 6th Respondents and/or any one or more of them to accept and/or receive as valid the Nomination Paper marked as "**P 1**" submitted on behalf of the Democratic National Alliance for the electoral district of Vanni for the parliamentary election scheduled to be held on the 14th of November 2024*
- e). *An interim order preventing 1st to 6th Respondents and/or any one or more of them from holding the parliamentary elections in respect of election of members to the electoral district of Vanni scheduled to be held on the 14th of November 2024 until hearing and final determination of this application.*
- f). *Call for and examine any and all records, including the original Nomination Paper filed by the Petitioners maintained by the 1st to 6th Respondent and/or CCTV Footage of the District Secretary dated 10th October 2024 and/or the book that was placed at the entrance of the Divisional Secretariat to enter the details of the parties and/or any one or more of them in respect of the subject matter of this application.*

The Petitioners relied on the Judgment of this Court in SC/ WRIT/ Application No. 12/ 2018 (SC Minutes 30th August 2019). Learned Deputy Solicitor General, who appeared for the Respondents, took steps to display the CCTV recording of the whole incident of handing over the Nomination Paper by the Petitioners at the aforesaid counters at

the District Secretariat on the relevant date. We carefully watched and observed all the movements of the Petitioners i.e. how the 1st Petitioner walked into the District Secretariat office on that day, accompanied by the 2nd and 3rd Petitioners; how the 1st Petitioner handed over the Nomination Paper and supporting documents to the 2nd Petitioner to hold upon arrival at the registration/reception desk at the District Secretariat; how the 1st Petitioner then started writing on a paper (presumably the information sheet) at the counter; how at the same time, an officer had directed the 1st to 3rd Petitioners to go towards the table of the 6th Respondent which was some distance away from the afore-said registration/reception desk; how the 2nd and 3rd Petitioners proceeded to the table of the 6th Respondent Returning Officer; how the 1st Petitioner was still filling the information at the first counter; upon arrival at that table, how the 6th Respondent signalled the 2nd Petitioner to sit on the sole chair available in front of him; how 6th Respondent Returning Officer then gestured the 2nd Petitioner to hand over the Nomination Paper to him; how the 2nd Petitioner responding to the signalling/gesture of the 6th Respondent handed over the Nomination Paper to the 6th Respondent Returning Officer; how the 6th Respondent requested the National Identity card from the 2nd Petitioner; how the 1st Petitioner after finishing the filling of information in front of the help desk, thereafter immediately intervened at the counter where the 6th Respondent was seated.

Having taken a closer view of this footage and having studied the Judgement of this Court in SC/ WRIT/ Application No. 12/ 2018 we take the view that the facts and circumstances of the instant case are similar to those in SC/ WRIT/ Application No. 12/ 2018.

Although SC/ WRIT/ Application No. 12/ 2018 deals with the rejection of the Nomination Paper submitted under the Local Authorities Elections Ordinance No. 53 of 1946, the effect of the wordings in the relevant provisions are the same as Sections 15 (4) and (5) of the Parliamentary Elections Act. To make this clear let me reproduce the relevant provision below:

Section 28(5), Local Authorities Elections Ordinance No. 53 of 1946

Each nomination paper shall be signed by the secretary of a recognized political party and in the case of an independent group, by the candidate whose name appears in the nomination paper of that group and is designated therein as the group leader of that group (such candidate is hereinafter referred to as "the group leader") and shall be attested by a Justice of the Peace or by a Notary Public.

Such nomination paper shall be delivered to the returning officer within the nomination period by the secretary or the authorized agent, in the case of a recognized political party, or the group leader in the case of an independent group.

We have carefully perused the Judgment of this Court in SC/ WRIT/ Application No. 12/ 2018 (SC Minutes 30th August 2019). In that case, there were three Petitioners. The 1st Petitioner in that case was the duly appointed authorised agent for the election of members of Elpitiya Pradeshiya Sabha at the Local Authorities Election 2018. In the said case, the followings were established before Court from the documents:

- i. both the 1st Petitioner and the 2nd Petitioner entered the premises of the District Secretariat of Galle at 10.55 am on 21st December 2017 and proceeded to its auditorium for the purpose of delivering the Nomination Paper of the Democratic United National Front to the 1st Respondent;
- ii. the 2nd Petitioner was seated in front on the 1st Respondent's desk;
- iii. the 1st Petitioner was seated by the side of the 2nd Petitioner;
- iv. the 1st Petitioner and 2nd Petitioner were seated together in front of the 1st Respondent's desk and that they came there for the specific purpose of delivering the Nomination Paper of their political party to the 1st Respondent.

Having considered the facts, circumstances and the background of the case, Prasanna Jayawardena, J. in SC/ WRIT/ Application No. 12/ 2018 had the following to say:

The fact that the 1st petitioner was, all along, seated by the side of the 2nd petitioner and was, thereby, participating in the act of handing over

the Nomination Paper to the 1st respondent cannot be ignored. The 1st petitioner was very much an integral part of the act of "delivering" the Nomination Paper to the 1st respondent. Too much should not be read into the fact that it was the 2nd petitioner who physically handed the Nomination Paper to the 1st respondent since it is clear that the 1st petitioner was present at that very moment by the side of the 2nd petitioner and that the 2nd petitioner was acting on behalf of the 1st petitioner and under the direct control of the 1st petitioner. Further, I have no doubt that the 2nd petitioner handed the Nomination Paper to the 1st respondent only because the 1st respondent beckoned him to do so and that the 1st and 2nd petitioners rushed to obey. I also accept the petitioners' narration that, thereafter, the 2nd petitioner handed his National Identity Card to the 1st respondent only because the 1st respondent insisted that he did so.

In these circumstances, I have no hesitation in holding that there was compliance with the requirements of section 28 (5) of the Ordinance which require that the Nomination Paper and supporting documents be "delivered" to the 1st respondent by the authorised agent of the political party. In my view, the aforesaid circumstances in which the Nomination Paper and supporting documents were handed to the 1st respondent constitute "delivery" of the Nomination Paper by the 1st petitioner, who was the authorised agent of the political party since the 1st petitioner was physically present at the time and the Nomination Paper was handed to the 1st respondent by the 2nd petitioner who was acting under the 1st petitioner's direct control at that time and on behalf of the 1st petitioner. As observed earlier, the 1st petitioner was an integral part of the act of "delivering" the Nomination Paper to the 1st respondent.

We observed that the Petitioners had prayed for an interim order to prevent the 1st to 6th Respondents from holding the Parliamentary Election in respect of the electoral district of Vanni which was scheduled to be held on the 14th of November 2024 until

hearing and final determination of this Petition. Therefore, with a view to avoid inconvenience to all the parties and to facilitate the smooth conduct of the already scheduled Parliamentary Election, Court after considering all the matters, few days after the Petitioners first supported this case (i.e. on 22nd October 2024), indicated to parties its final conclusion in open court pending the pronouncement of its reasons for the said final conclusion. It was subsequent to the said indication that the learned Deputy Solicitor General on the following day (i.e., on 23rd October 2024) informed Court that the Election Commission would take appropriate steps based on the final conclusion of this Court which was indicated to the parties in open court. Having considered the factual background of this case, we are of the view that the Petitioners had duly handed over the Nomination Paper (**P 1**) to the 6th Respondent Returning Officer sufficiently complying with the provisions in Section 15 (4) of the Parliamentary Elections Act No. 01 of 1981 as amended. In the factual circumstances of this case, we hold that it was unreasonable for the 6th Respondent to have rejected the Nomination Paper (**P 1**) on the basis that it was not duly handed over by the candidate whose name appeared first in the Nomination Paper.

Court on 22-10-2024, had already proceeded to pronounce that the Returning Officer (the 6th Respondent) was obliged in law to have accepted the Nomination Paper which the 1st Petitioner was to hand over. On the same day the Court also proceeded to pronounce that in those circumstances, the Court would issue a Writ of Certiorari to quash the decision of the Returning Officer to reject it and issue a Writ of Mandamus to compel the relevant Respondents to accept the Nomination Paper relevant to this case.

In the above circumstances and for the foregoing reasons, we decide to issue:

- i. *a mandate in the nature of Writ of Certiorari quashing the decision of the 6th Respondent as set out in the letter marked "**P 3**", rejecting the Nomination Paper submitted on behalf of Democratic National Alliance for the electoral District of Vanni;*

- ii. *Issue a mandate in the nature of Writ of Mandamus on the 1st to 6th Respondents and/or any one or more of them to accept and/or receive as valid the Nomination Paper marked as "**P1**" submitted on behalf of the Democratic National Alliance for the electoral district of Vanni for the parliamentary election scheduled to be held on the 14th of November 2024*

In all the circumstances of this case, we order no costs.

JUDGE OF THE SUPREME COURT

A. L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT