

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

In the matter of an Application under and in terms  
of Articles 17 and 126 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

Dr. K. Kobindarajah  
130. Kannaki Amman Kovil Lake Road,  
Poompuhar, Batticaloa

*Petitioner*

SC FR Application No. 24/2016

Vs.

1. Eastern University, Sri Lanka  
Vantharumoolai,  
Chenklady
2. Prof. Uma Coomaraswamy  
Competent Authority  
Council Chairman,  
Eastern University, Sri Lanka  
Vantharumoolai,  
Chenkalady
3. Mr. V. Kanagasingam,  
Rector, Trincomalee Campus  
Council Member,
4. Dr. K.T. Sundaresan  
Dean, Faculty of Health –Care Sciences  
Council Member,
5. Dr. K. Rajendram  
Dean, Faculty of Arts & Culture  
Council Member,
6. Mr. R. Uthayakumar,  
Dean, Faculty of Commerce and Management  
Council Member,
7. Dr. F.C. Ragel  
Dean, Faculty of Science  
Council Member,
8. Dr. P. Sivarajah  
Dean, Faculty of Agriculture  
Council Member,
9. Mr. T. Baskar  
Dean, Faculty of Communication & Business Studies,

Trincomalee Campus,  
Council Member,

10. Dr. K.E. Karunakaran,  
Senate Nominee,  
Council Member,
11. Mr. P. Sachithanathan,  
Senate Nominee,  
Council Member,
12. Mr. A. Gnanathanan,  
UGC Appointed Council Member,
13. Rev. Fr. Dr. Paul Robinson,  
UGC Appointed Council Member,
14. Mr. P. Kannan,  
UGC Appointed Council Member,
15. Prof. R. Sivakanesan,  
UGC Appointed Council Member,
16. Dr. H.R. Thabavita,  
UGC Appointed Council Member,
17. Mrs. P.S.M. Charles,  
UGC Appointed Council Member,
18. Dr. M.S.M. Ibralebbe,  
UGC Appointed Council Member,
19. Dr. M. Thamilvannan,  
UGC Appointed Council Member,
20. Mr. S.M. Hussain,  
UGC Appointed Council Member,
21. Mr. P.T. Abdul Hassan,  
UGC Appointed Council Member,
22. Dr. S. Maunaguru,  
UGC Appointed Council Member,  
The 3<sup>rd</sup> to the 22<sup>nd</sup> Respondents abovenamed all  
of the Eastern University, Sri Lanka,  
Vantharumoolai, Chenkalady
23. Mr. A. Paheerathan,  
Acting Registrar/Secretary to the Governing

Council, Eastern University, Sri Lanka,  
Vantharumoolai,  
Chenkalady

24. University Grants Commission  
No. 20, Ward Place,  
Colombo 7.
25. Prof. Mohan de Silva,  
Chairman,  
University Grants Commission  
No. 20, Ward Place,  
Colombo 7.
26. Prof. P.S.M. Gunaratne  
Member,  
University Grants Commission  
No. 20, Ward Place,  
Colombo 7.
27. Prof Malik Ranasinghe  
Member,  
University Grants Commission  
No. 20, Ward Place,  
Colombo 7.
28. Dr. Wickrama Weerasooriya  
Member,  
University Grants Commission  
No. 20, Ward Place,  
Colombo 7.
29. Prof Hemantha Senanayake  
Member,  
University Grants Commission  
No. 20, Ward Place,  
Colombo 7.
30. Dr. Ruvaiz Haniffa  
Member,  
University Grants Commission  
No. 20, Ward Place,  
Colombo 7.
31. Prof. Kumarvadivel  
Member,  
University Grants Commission  
No. 20, Ward Place,  
Colombo 7.

32. Dr. Priyantha Premakumara  
Secretary to the  
University Grants Commission  
No. 20, Ward Place,  
Colombo 7.
33. Hon. Lakshman Kiriella  
Minister of University Education & Highways  
Ministry of University Education & Highways  
No. 18, Ward Place,  
Colombo 07.
34. Mr. D.C. Dissanayake  
Secretary to the Ministry of University Education &  
Highways,  
Ministry of University Education & Highways,  
No. 18, Ward Place,  
Colombo 7.
35. Dr.Thangamuthu Jeyasingam  
Department of Botany,  
Eastern University  
Vantharumoolai  
Chenkalady
36. Dr. Mylvaganam Pagthinathan,  
Department of Animal Science,  
Eastern University  
Vantharumoolai  
Chenkalady
37. Dr. Jeevaretnam Kennedy  
Department of Languages  
Eastern University  
Vantharumoolai  
Chenkalady
38. Dr. Ponniah Sivarajah  
Dean of Faculty of Agriculture  
Eastern University  
Vantharumoolai  
Chenkalady
39. Dr. Theivanayagam Thiruchelvam  
Faculty of Agriculture  
Eastern University  
Vantharumoolai  
Chenkalady
40. Dr. (Mrs.) Chandrakantha Mahendranathan  
Department of Botany,

Eastern University,  
Vantharumoolai,  
Chenkalady

41. Professor S Ratnajeevan Hoole  
86, Chemmani Road,  
Nallur,  
Jaffna

42. Hon. Attorney General,  
Attorney General's Department  
Hulftsdorp, Colombo 12.

***Respondents***

**BEFORE** : K. Sripavan, C.J.  
P. Jayawardena, P.C., J.  
A. Gooneratne, J.

**COUNSEL** Faiz Musthapha, PC. With Uditha Egalahewa, PC. and  
Dhamitha Karunarathne for the Petitioner.

Milinda Gunathilake, Deputy Solicitor General for the 1<sup>st</sup>  
– 34<sup>th</sup> and 42<sup>nd</sup> Respondents.

M.A. Sumanthiran for the 35<sup>th</sup> Respondent.

**ARGUED ON** : 03.03.2016

**WRITTEN SUBMISSIONS  
FILED ON** : 04.04. 2016 by the Petitioner  
04.04.2016 by 1<sup>st</sup> to 3<sup>rd</sup> and 42<sup>nd</sup> Respondents  
03.03.2016 by 1<sup>st</sup> – 34<sup>th</sup> and 42<sup>nd</sup> Respondents.  
31.03.2016 by 35<sup>th</sup> Respondent.

**DECIDED ON** : **21.06.2016**  
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**K. SRIPAVAN, C.J.,**

The Petitioner in this application, seeks directions, inter alia,

- (a) against the 1<sup>st</sup> to 34<sup>th</sup> and 42<sup>nd</sup> Respondents to conduct a fresh election to the post of Vice Chancellor, having included the name of the Petitioner in the Ballot Paper in terms of the University Grants Commission Circulars No. 880 dated 15.08.2006, University Grants Commission Establishments Circular No. 15/2006 dated 11.12.2006 read with Section 34 of the Universities Act; and
- (b) a declaration that the appointment of the 35<sup>th</sup> Respondent to the post of Vice Chancellor of the 1<sup>st</sup> Respondent University is null and void and in violation of Article 12(1), 12(2) and 14(1)(g) of the Constitution.

When the application was taken up for support, the Learned Deputy Solicitor General appearing for the 1<sup>st</sup> to 34<sup>th</sup> and 42<sup>nd</sup> Respondents raised two preliminary objections to the maintainability of the Petition on the following basis :

- i. The complaint of the Petitioner relating to the alleged infringement of his fundamental rights on 12.12.2015 as set out in paragraph 36 and the succeeding paragraphs of the Petition is time barred in terms of Article 126(2) of the Constitution.
- ii. The relief claimed against His Excellency the President in terms of the prayers to the Petition (paragraphs (b) and (c) of the Petition) is in violation of Rule 44(1) of the Supreme Court Rules, in that the Petition does not set out a plain and concise statement of the facts relating to the manner in which His Excellency the President allegedly violated the rights of the Petitioner.

Mr. Sumanthiran, Counsel for the 35<sup>th</sup> Respondent associated with the Preliminary Objections raised by the Learned Deputy Solicitor General.

The Petitioner in paragraph 36 of the Petition claims that the election for the post of Vice Chancellor of the 1<sup>st</sup> Respondent University was held on 12.12.2015, contrary to the direction of this Court made in case No. S.C. F.R. 397/15 dated 10.12.2015 by the 2<sup>nd</sup> to 23<sup>rd</sup>

Respondents and the Petitioner was illegally prevented from contesting at the election as the Petitioner's name was excluded from the Ballot Paper. Thus, the Petitioner was aware that his name was excluded from the Ballot Paper at the said election held on 12.12.2015. In other words, the alleged infringement of the Petitioner took place on 12.12.2015. According to Article 126(2) of the Constitution, where a person alleges that his fundamental right has been infringed or is about to be infringed by executive or administrative action, he must apply to the Supreme Court within one month thereof.

The Supreme Court in *Gamaethige Vs. Siriwardena and Other* (1988) 1 S.L.R. 384 made it very clear that the fundamental rights jurisdiction of the Supreme Court under Article 126(1) is sole and exclusive and any time spent in making appeals does not prevent or delay the operation of the time limit of one month. In *Ramanathan Vs. G.A. Kandy* (1988) 2 C.A.L.R. 187, the Petitioner argued that the delay was due to an appeal made to Director for Human Rights. The Court followed the legal principle in the majority judgment in *Gamaethige Vs. Siriwardena and Others* and held that the application was out of time.

However, in *Namasivayam Vs. Gunawardena* (1989) 1 S.L.R. 394 Sharvananda C.J., overruling a Preliminary Objection that the Petitioner was out of time, stated that to make the remedy under Article 126 meaningful to the Petitioner, the one month period should be calculated from the time the Petitioner is under no restraint. Thus, the one month prescribed by Article 126(2) was made available to the Petitioner from the time he had free access to the Supreme Court. Therefore, where the Petitioner establishes that he became aware of an infringement, the very day the act complained of was committed, the period of one month would be computed only from the date on which the Petitioner did in fact become aware of such infringement and was in a position to take effective steps to invoke the jurisdiction of this Court, unless the Petitioner establishes that his free access to Supreme Court is restrained.

The Petitioner in this application was aware of the infringement on 12.12.2015. The jurisdiction of this Court was invoked on 29.01.2016. I therefore hold that the Petitioner cannot in this application seek to challenge the decision of the Council to exclude the Petitioner's name from the Ballot Paper and made known to the Petitioner on 12.12.2015

as the application is time barred. The Court cannot and will not grant the relief sought in paragraph (d) of the prayer to the Petition, without setting aside the election held on 12.12.2015. Thus, the Petitioner is not entitled to the relief sought in paragraph (d) of the prayer to the petition.

The next matter to be considered is whether the Petitioner could seek a declaration that the appointment of the 35<sup>th</sup> Respondent to the post of Vice Chancellor of the 1<sup>st</sup> Respondent University is null and void. The Petitioner in paragraph 41 of the Petition states thus :-

*“The Petitioner states that the 35<sup>th</sup> Respondent was appointed on the results of the said illegal election/decision making process that had been communicated to the 24<sup>th</sup> Respondent University Grants Commission which the 24<sup>th</sup> Respondent had forwarded the results of the said illegal election/decision making process to His Excellency the President. His Excellency the President, acting upon the said purported results of the said illegal election/decision making process appointed the 35<sup>th</sup> Respondent Dr. Thangamuthu Jeyasingam to the post of Vice Chancellor of the 1<sup>st</sup> Respondent University, on or about 21.01.2016.”*

It must be noted that His Excellency the President exercises his discretion and appoints one person as the Vice Chancellor out of the names forwarded by the University Grants Commission. What happens if His Excellency the President refuses to appoint anyone out of the names sent by the University Grants Commission? Hence, the violation, if any takes place only when the appointment is made.

On the face of the averments contained in Paragraph 41 of the Petition, the appointment of the 35<sup>th</sup> Respondent was made on 21.01.2016 and the Petitioner filed this application on 29.01.2016 well within the one month time prescribed by Article 126(2) of the Constitution.

This Court as the protector and guarantor of the fundamental rights, cannot refuse to entertain such application seeking protection against infringement of such rights. Accordingly, the Petitioner is entitled to support his application for leave to proceed in so far as it relates to the appointment of the 35<sup>th</sup> Respondent to the post of Vice Chancellor of the



1<sup>st</sup> Respondent University and whether such appointment violates the fundamental rights guaranteed to the petitioner by Article 12(1), 12(2) and 14(1)(g) of the Constitution.

**CHIEF JUSTICE.**

**P. JAYAWARDENA, P.C., J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**A. GOONERATNE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**