

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

In the matter of an application for the
offence of Contempt of Court under and in
terms of Article 105(3) of the Constitution
of the of the Democratic Socialist Republic
of Sri Lanka.

SC /Contempt No. 02/2023

Herath Mudiyansele Vijitha Herath
No. 464/20 Pannipitiya Road,
Pelawatta, Battaramulla.

Complainant-Petitioner

Vs.

K.M. Mahinda Siriwardana
Secretary to the Treasury
Ministry of Finance
The Secretariat
Colombo 01.

Contemnor-Respondent

SC /Contempt No. 03/2023

Rathnayake Mudiyansele Ranjith
Madduma Bandara
No. 31/3, Kandawatte Terrace
Nugegoda.

Complainant-Petitioner

Vs.

K.M. Mahinda Siriwardana
Secretary to the Treasury
Ministry of Finance
The Secretariat
Colombo 01.

Contemnor-Respondent

- Before : Jayantha Jayasuriya, PC, CJ
Buwaneka Aluwihare, PC, J.
Priyantha Jayawardena, PC, J.
Vijith K. Malalgoda, PC, J.
Murdu N.B. Fernando, PC,J.
- Counsel : Upul Kumarapperuma with Kaneel Maddumage, Radha
Kuruwitabandara & Dulini Godagamage for the Complainant-
Petitioner in SC. Contempt No. 02/2023.
G. Alagaratnam, PC with Suren Fernando, Sandamali Rajapaksha,
Lasantha Garusinghe, Luwie Ganeshadasan, Nisala Seniya
Fernando and Supuni Gunasekara for the Complainant-
Petitioner in SC. Contempt No. 03/2023.
Eraj de Silva with Hafeel Faris , N.K. Ashokbharan, Janaka
Sundaramoorthy, Daminda Wijeratne for the Contemnor –
Respondent instructed by Vidanapathirana Associates in SC.
Contempt No.02/2023 & SC. Contempt No. 03/2023.
- Written Submissions : 05th June 2023 on behalf of Attorney General in case Nos.
filed on SC. Contempt/02/2023 and SC. Contempt/03/2023.
07th June 2023 by the Contemnor – Respondent in Case No. SC.
Contempt/ 02/2023
08th June 2023 Preliminary written submissions by the
Contemnor – Respondent in Case No. SC. Contempt/ 03/2023.

21st June 2023 by Contemnor – Respondent in Case No. SC. Contempt/02/2023 and SC. Contempt/ 03/2023.

07th June 2023 by the Contemnor – Respondent in Case No. SC. Contempt/ 02/2023.

Argued on : 22.05.2023

Decided on : 14.11.2023

In both these matters K.M.Mahinda Siriwardane, Secretary to the Treasury is named as the Contemnor-Respondent (hereinafter referred to as the respondent). Furthermore, both these matters are described as applications for the offence of contempt of court under and in terms of Article 105(3) of the Constitution. While SC Contempt 02/2023 is filed by Herath Mudiyanseelage Vijitha Herath, Rathnayake Mudiyanseelage Ranjith Madduma Bandara has filed SC Contempt 03/2023. Both have identified themselves as complainant-petitioner in the respective applications.

These applications have been filed on the basis that the respondent willfully refused to abide by the Order of this Court dated 03 March 2023 in SC FR 69/2023 and failed to honour the aforesaid Order. Petitioners have further claimed that the respondent disregarded the aforesaid Order. They contend that the respondent had unduly interfered with the due administration of justice by his aforesaid conduct and thereby he had committed the offence of contempt of court, punishable under Article 105(3) of the Constitution.

In view of the fact that the cause of action pleaded in both these matters arise from the same conduct of the respondent and the fact that both petitioners have claimed the identical relief, they were listed together for support and all parties agreed that a single judgment can be delivered in relation to both these matters.

Both petitioners claim that the respondent was cited as the 1st respondent in SC FR 69/2023. The said application had been filed on the basis that arbitrary, wrongful, malicious, capricious, illegal, unlawful and pernicious actions and/or decisions of the respondent and/or actions or decisions of the Minister of Defence, Finance, Economic Stabilisation, National Policies, Technology, Investment Promotion, Women, Child Affairs and Social Empowerment to not provide adequate funds to the members of the Election Commission for the purpose of

conducting Local Government Elections have violated Fundamental Rights guaranteed to the petitioner of the said application and all other citizens under Article 12(1) and 14(1)(a) of the Constitution.

On 03rd March 2023, this Court having heard submissions of counsel representing all parties in the aforesaid application while granting leave to proceed, granted interim orders as prayed for in prayers (i) and (j) of the petition dated 21/02/2023.

Prayers (i) and (j) of the aforesaid petition reads as follows:

- (i) *Issue an interim order restraining and / or preventing the 01st and / or 2nd (ie Honourable Minister of Defence, Finance, Economic Stabilisation, National Policies, Technology, Investment Promotion, Women, Child Affairs and Social Empowerment represented by the Honourable Attorney-General) Respondents and their servants and agents and any other state functionary from withholding any funds allocated by the Activity Budget Estimates for the fiscal year of 2023 and / or the Budget for the year 2023 for the purpose of conducting Local Government Polls 2023 until the final determination of this application, subject to such terms, if any, as to Your Lordship's Court sees fit;*
- (j) *issue an interim order, restraining and / or preventing the 01st and / or 2nd (ie Honourable Minister of Defence, Finance, Economic Stabilisation, National Policies, Technology, Investment Promotion, Women, Child Affairs and Social Empowerment represented by the Honourable Attorney-General) Respondents and their servants and agents and any other state functionary from withholding any funds allocated by the Activity Budget Estimates for the fiscal year of 2023 and / or the Budget for the year 2023 for the purpose of conducting Local Government Polls 2023, from the 8th Respondent, until the final determination of this application, subject to such terms, if any, as Your Lordship's Court sees fit;*

The 8th respondents referred to in prayer (j) is the Government printer.

According to the petitioners, thereafter the 4th respondent in the aforesaid application - the Chairman of the Election Commission – by his letter dated 07th March 2023 while informing that a decision was taken to reschedule the elections for the local government authorities for 25th April 2023, requested the respondent to release a total sum of rupees one thousand and one hundred million to the election commission by 17th April 2023 in six tranches and a total sum of rupees one thousand three hundred and sixty to the police headquarters, government printer and the postal department. Subsequently, on 08th March 2023, the gazette notifications had been issued by the returning officers of respective administrative districts, declaring 25th April 2023 as the new date of elections for the local government authorities.

In response to this letter, the respondent had informed that he sought the approval of the Minister of Finance to release the funds as requested and steps would be taken to release funds no sooner such approval is granted. In the same letter the respondent had said, that the approval of the minister was sought in view of the direction of the Cabinet of Ministers dated 13th February 2023.

Thereafter, on 18th March 2023, the petitioner in Contempt 03/2023, Ranjith Madduma Bandara through an attorney-at-law had informed the respondent that steps will be initiated to charge the respondent for the offence of contempt of court as the latter is in manifest violation of the orders of the apex court and on 21st March 2023, the petitioner, initiated proceedings before this Court.

Upon receipt of these applications this Court listed them for support with notice to the Attorney-General. When these matters were taken up for support, the respondent was represented by the Counsel, even no notices were issued on him by court.

At the commencement of the hearing the learned counsel for the respondent raised preliminary objections on several grounds and moved that these applications be dismissed *in limine*. Such objections were raised on the basis that; the respondent did not have the ability to comply with the direction of the Court, there is no wilful or contumacious act of the respondent, petitioners failed to annex the charge sheet / or the draft charges, Court lacks jurisdiction, the petitioners have invoked jurisdiction for collateral purposes and the petitioners have no *locus standi*. In response to these objections, the learned counsel for the petitioners contended that none of the objections have merit and moved that they be rejected and a show cause notice be issued against the respondent.

Jurisdiction of the Court

Learned Counsel for the respondent contended that the two petitions should be dismissed *in limine* as this Court lacks jurisdiction. It was submitted that Courts do not have jurisdiction to consider any matter relating to powers of Parliament as stipulated under Article 4(c) of the Constitution. It is his contention that the matters connected to these proceedings forms part of powers of Parliament in relation to public finance and Article 4(c) excludes the judicial power of the Courts including the power to punish for contempt of court in the matters relating to public finance.

Article 4(c) of the Constitution reads as: *“the judicial power of the people shall be exercised by Parliament through courts, tribunals and institutions created and established, or recognized by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members, wherein the judicial power of the people may be exercised directly by Parliament according to law;”*.

The learned counsel further contends that matters relevant to these proceedings fall within the ambit of “control of public finance” and therefore Article 148 of the Constitution precludes Court from examining this matter. It is his submission that under Article 4 (c) judicial power of the people relating to matters on powers of parliament has to be exercised by Parliament and not by Parliament through courts.

Article 148 of the Constitution reads as:

“Parliament shall have full control over public finance. No tax, rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of a law passed by Parliament or of any existing law”.

Learned Counsel for the Petitioners submitted that the respondent’s contention has no merit. While conceding that the Parliament’s authority on public finance since the Parliament is vested with full control over public finance by Article 148 of the Constitution, present proceedings relate to an Order made by this Court and Court’s jurisdiction as recognized under Article 105 (3) of the Constitution.

Article 105(3) reads as:

“The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the

powers of such court including the power to punish for contempt itself, whether committed in the court itself or elsewhere ...”

When we examine the nature of proceedings before this Court, it is clear that the petitioners are invoking jurisdiction of this court under Article 105(3) on the basis that the respondent failed to act in accordance with an order made by this Court. Jurisdiction of this court in relation to matters of Contempt of Court had been in existence over a period of time and such power is vested in court to protect the dignity and authority of the court. We do not see any merit in the submissions of the learned Counsel for the respondent on this matter. Therefore we overrule this objection.

Respondent’s ability to comply with the order

The learned Counsel for the respondent submitted, that at this stage the Court should be satisfied that there is evidence available which can lead the court to conclude that an offence appears to have been committed, if the court is to issue a rule nisi for contempt of court. It is his contention that when the Court is deciding whether an offence appears to have been committed, the Court should consider four elements namely; (a). existence of an undertaking or an order, (b). knowledge of the undertaking or order, (c). ability to comply with the undertaking or the order, (d). wilful contumacious disobedience of undertaking or order.

The learned Counsel for the respondent submitted that the interim Order of the Court dated 03rd March 2023 requires the respondent (a). *not to withhold any funds allocated by the Activity Budget Estimates for the fiscal year of 2023 and / or the Budget for the year 2023 for the purpose of conducting Local Government Polls 2023 and (b). not to withhold from the 8th Respondent any funds allocated by the Activity Budget Estimates for the fiscal year of 2023 and / or the Budget for the year 2023 for the purpose of conducting Local Government Polls 2023.* The 8th Respondent in the said application was the Government Printer.

The Counsel contended that if this Court is to issue a rule nisi on the respondent, the petitioners should satisfy court that there is sufficient evidence for the Court to conclude that the respondent had the ability to comply with the said order. He contended that at no stage the respondent withheld release of funds but at all times acted according to the Constitution.

As per the material presented before this Court by the petitioners in this matter, subsequent to the aforesaid order of this Court dated 03rd March 2023, the respondent received a request of the Election Commission dated 07th March 2023 to release funds for the conduct of local

government elections. Upon receipt of this request, he sought permission from the Minister of Finance to release such funds and on the same day informed the election commission that steps would be taken to release funds no sooner he is granted permission. It is his position that he had to seek permission to release funds in view of the cabinet decisions dated 06th and 13th February 2023. It is his contention that the material available to this court reveal that the Cabinet of Ministers on 06th February 2023 and on 13th February 2023 had approved the Minister of Finance to advise the Secretary to the Treasury to release imprest only for the expenditure set out in the relevant Cabinet Memorandums until the revenue condition reaches the expected levels. Therefore, the learned counsel contends that the material available before this court is insufficient for the court to conclude that the respondent had the ability to comply with the Order of this court.

Furthermore, he submits that the respondent by his affidavit dated 13th March 2023 filed together with annexures A1, A2 and A3 in SC FR 69/2023 – the case in which the relevant Order was made - apprised the court of the request made by the election commission and the steps he took in relation to the said request. The learned Counsel contends, that the respondent by his conduct demonstrated his willingness to comply with the order and entertains no disrespect towards the Court. The learned Counsel further submitted that the Petitioners have deliberately withheld this fact in their petitions filed in this Court on 21st and 22nd March 2023 and thereby is guilty of suppression of relevant material.

Countering these submissions, the learned President's Counsel for the petitioners in SC Contempt 03/2023 contends, that the ability of the respondent to comply with the order of this court is a matter that should be examined by this Court at the main hearing. It is for the respondent to demonstrate this factor by presenting all necessary material at a full inquiry. Furthermore, they contend that the matters raised by the respondent were already considered by this Court when it made the Order on 03rd March 2023 and therefore the respondent has no right to agitate the same facts in these proceedings. In their submission that the respondent's failure to release funds to the Election Commission and other agencies to meet the expenses relating to the conduct of local government elections amounts to noncompliance with and a complete disregard of, the Order of this Court. The learned counsel for the petitioners in SC Contempt 02/2023 fully associated with the above submissions.

In considering these submissions this Court first needs to examine the nature and the scope of the relevant order. There are two parts in the order. The effect of the first part of the interim order

issued by the court as applicable to the respondent is restraining and / or preventing him from withholding any funds allocated by the Activity Budget Estimates for the fiscal year of 2023 and / or the Budget for the year 2023 for the purpose of conducting Local Government Polls 2023. The second part as applicable to the respondent is restraining and / or preventing him from withholding any funds allocated by the Activity Budget Estimates for the fiscal year of 2023 and / or the Budget for the year 2023 for the purpose of conducting Local Government Polls 2023, from the Government Printer. Therefore, the effect of these orders is, preventing the respondent from withholding funds allocated for the purpose of conducting the local government polls 2023.

Examination of all the material available to this Court reveal that the Budget Estimates of 2023 had set out Rupees 10,910 million under the heading Election Commission and the General Treasury had released a total sum of 165 million rupees between 31st January 2023 and 07th February 2023 under the General Warrant on the request of the Election Commission. The Election Commission on 07th March 2023 had requested the respondent to release a total sum of Rupees 1100 million prior to 25th April 2023 to the Election Commission and a further total sum of Rupees 1360 million to the Police Head Quarters, Printing Department and the Postal Department as election related expenditure. However, despite the interim order of this Court dated 03rd March 2023 directing the respondent **not to withhold** funds required for the Local Government Elections 2023, the respondent had replied that he sought approval from the Minister of Finance and would take steps to release funds no sooner he receives the approval.

The issue before this Court is whether the respondent had breached the above mentioned Order of this Court and thereby have committed Contempt of Court. In this context, is there *prima facie* evidence that the respondent withheld funds, for this Court to issue summons and/or an order nisi against the respondent? It is pertinent to note that the Court by the Order dated 03rd March 2023 had not directed the respondent to release funds. In this background, the question arises as to whether the respondent by 07th March 2023 had the authority to release funds as requested by the Election Commission. For this Court to examine this issue, all material presented need to be considered and in that process this Court is not precluded from examining the material that had already been considered by this Court, at the time the interim Order was made. This Court independent of the relevant order of this Court, needs to be satisfied in these proceedings that the respondent had the ability to give effect to the said Order and if there had been any non-compliance or a breach of the order whether it amounted to contempt of court.

The Privy Council in **Reginald Perera v The King** 52 NLR 293 at 296 in reference to the definition of contempt of court, it was observed:

“...That phrase has not lacked authoritative interpretation. There must be involved some act done or writing published calculated to bring a Court or a judge of the Court into contempt or to lower his authority ” or something ” calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts ”

The Court of Appeal in **Croos and Another v Dabrera** [1999] 1 SLR 205 at 209-210, observed that:

“The charge of contempt of court, was classically defined in the case of Regina v. Kopito, by Goodman, J. as "the scandalizing of the court, in that the words or the acts are likely to bring the court and Judges into disrepute.

The action taken with regard to acts of contempt is based on the premises that a well-regulated laws of a civilized community cannot be sustained without sanctions being imposed for such conduct. It is therefore thought important to maintain the respect and dignity of the court and its officers, whose task it is to uphold and enforce the law, because without such respect, public faith in the Administration of Justice would be undermined and the law itself would fall into disrepute.”

The Court further observed that *“Even if contempt is not always a crime, it bears a criminal character and therefore, it must be satisfactorily proved. Lord Denning, M. R in Re Bramblewale ([1969] 3 ALL ER 1012) stated that "a contempt of court must be satisfactorily proven. To use the all time honoured phrase it must be proven beyond reasonable doubt”* (supra at 210)

In **Perkier Foods Ltd v Halo & Mr Tague** [2019] EWHC 3462 (QB) in describing the *mens rea* required to establish contempt of court cited with approval the following observation in **Masri v Consolidated Contractors Ltd** [2011] EWHC 1024 (Comm):

“In order to establish that someone is in contempt it is necessary to show that (i) that he knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of the facts which made his conduct a breach...”.

Furthermore, the court accepted that it was not necessary to show any direct intention to disobey the order. However, the court cited with approval the views of court in *Sectorguard plc v Dienne plc* [2009] EWHC 2693 (Ch), that:

“...failure to perform an impossible undertaking is not a contempt. The mental element required of a contemnor is not that he either intends to breach or knows that he is breaching the court order or undertaking, but only that he intended the act or omission in question, and knew the facts which made it a breach of the order.

Nonetheless, even a mental element of that modest quality assumes that the alleged contemnor had some choice whether to commit the relevant act or omission. An omission to do that which is in truth impossible involves no choice at all. Failure to comply with an order to do something, where the doing of it is impossible, may therefore be a breach of the order, but not, in my judgment a contempt of court”.

In **Perkier** (supra) Justice Chamberlain held that

14. *“...Contempt of court, whether criminal or civil, was at common law a misdemeanour: see Dean v Dean [1987] 1 FLR 517, per Neill LJ, cited in Arlidge, Eady & Smith on Contempt (5th ed.), §12-51. That, together with the fact that its potential consequences include imprisonment and other penal sanctions, is why its elements must be proved to the criminal standard. In Sectorguard, Briggs J reasoned that a person who has no choice, because compliance with the order is impossible, does not have even the modest mens rea required for contempt. It is for the applicant to prove to the criminal standard that the respondent had the necessary mens rea. In a case where the respondent says that compliance was impossible, and there is some evidence to that effect, mens rea is in issue and it should be for the applicant to prove to the criminal standard that compliance was possible, in the sense that the respondent had a choice about what to do. That result is consistent with the general rule in criminal law.*

15. *In the vast majority of cases, it will not be difficult for the applicant to prove that compliance is possible. In general, an injunction will not be granted if it would be*

impossible to comply with it. Furthermore, as the above cases show, it is not necessary to show that compliance would have been easy or convenient or inexpensive. Court orders must be complied with even if compliance is burdensome, inconvenient and expensive. What has to be proved on a committal application, in a case where the respondent has adduced evidence that compliance would be impossible (and so has discharged the evidential burden), is simply that compliance was possible.....”

The Court in **Croos** (supra at 210) while describing the *mens rea* required to establish a charge of contempt of court, observed, that:

“Under Rule 31 of the Old English Rules of the Supreme Court, an act of disobedience would become an act of contempt only if it was "Willful". "Willful" was taken to mean that while, where the terms of an injunction were broken it was not necessary to show that the person was intentionally contumacious or that he intended to interfere with the administration of justice, yet where the failure or refusal to obey the order of court was casual or accidental and unintentional, it will "not be met by the full rigours of the law” ”.

In **Dayawathie and Peiris v. Dr. S. D. M. Fernando and others** [1988] 2 SLR 314 Amerasinghe J cited with approval the following views of the Supreme Court of India in *Debabrata Bandopadhyay v The State of West Bengal* (AIR 1969 SC 189) and in *Ragunath Rai v P.Sahai* (1968 S.C. 189, 193) :

“A question whether there is contempt of court or not is a serious one. The Court is both the accuser as well as the Judge of the accusation. It behoves the Court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished Punishment under the law of contempt is called for when the lapse is deliberate and is in disregard of one’s duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.” (Debabrata – supra).

“Whether in a particular case contempt has been committed or not, has to be decided in the light of the circumstances of each. case. While zealously safeguarding the dignity of the Court, it is also to be borne in mind that it is of equal importance that-contempt

proceedings should not be abused and that utmost care must be taken to avoid resort to such proceedings in such cases where such action is not appropriate. Though disregard of a Court's order may itself amount to contempt even in the absence of disobedience; it would still be necessary, in my opinion, to prove in most cases, that even the disregard was wilful and not bona fide” (Ragunath Rai – supra).

When the legal principles as derived from these authorities are considered in the context of the facts presented by all parties before this court, firstly, it is common ground that what is ordered by this Court is for the respondent not to withhold funds. Secondly, the Appropriation Act, No.43 of 2022 had allocated to each expenditure head in accordance with the budgetary provisions for year 2023. However, on 06th February 2023, the Cabinet of Ministers had granted approval to the Minister of Finance to advise the Secretary to the Treasury to release imprest only for expenditure relating to twenty-two subjects specified in the Cabinet Memorandum on “Maintaining Essential Public Services in the Most Difficult Financial Circumstances” until the revenue condition reaches the expected level. This decision had been communicated to the respondent on the 7th February 2023 by the Secretary to the Cabinet of Ministers specifying, “action by Ministry of Finance, Economic Stabilisation and National Policies”.

Cabinet of Ministers had taken this decision in the backdrop where the Cabinet of Ministers from January 2023 had considered several proposals relating to estimated expenditure as identified in the Appropriation Act, No.43 of 2022. In this regard the Cabinet of Ministers had considered matters including Payment of Government Salary Bill, Reduction of Recurrent Provisions in the Expenditure Estimates approved for the year 2023 by 05 Percent, Relief to vulnerable low-income families and Government Paddy Purchasing Programme.

It is pertinent to note that the Cabinet of Ministers is charged with the direction and control of the Government of the Republic while the Parliament is vested with full control over public finance, within the constitutional framework. In the context of the role of Parliament and the executive over the Government expenditure as envisaged in the Appropriation Act, it is pertinent to note that Section 7 of the Appropriation Act provides that:

“Where the Minister is satisfied- (a) that receipts from taxes and other sources will be less than the amounts anticipated to finance authorized expenditure; or (b) that amounts originally appropriated for a particular purpose or purposes are no longer required, he may with the approval of the Government, withdraw in whole or in part any amounts previously released for

expenditure under the authority of a warrant issued by him, from the Consolidated Fund or from any other fund or moneys, of or at the disposal of the Government, to meet any authorized expenditure and the details of all such withdrawals shall be incorporated in the Final Budget Position Report which is required to be tabled in Parliament under section 13 of the Fiscal Management (Responsibility) Act, No. 3 of 2003”.

When the aforementioned cabinet decisions are considered in the context of the provisions of the Appropriation Act as described above, it appears that the direction to the respondent to confine the release of imprest to identified subjects “until the revenue conditions reaches the expected level”, the respondent is legally obliged to seek the approval of the Minister of Finance to release imprest for any purpose other than the above mentioned specified subjects. The respondent having informed the Election Commission of his position had appraised the court by his affidavit dated 13th March 2023 the steps that he took in seeking the approval of the Minister and the fact that he lacks authority to materialize budgetary allocations without the approval of the Minister. The impugned conduct of the respondent therefore reflects that the respondent had taken necessary measures within his purview. In our view available evidence is insufficient to establish a prima facie case of contempt of court solely on the ground that he took this lawful step as a precursor to taking a decision on the request of the Election Commission to release funds.

In view of these findings, we are of the view that the material available does not warrant initiating contempt of court proceedings against the respondent. Both applications are devoid of any merits.

Before concluding, it is also pertinent to note that the Election Commission upon receipt of the response of the respondent dated 07th March 2023, had written to the Minister of Finance on the following day (i.e 08th March 2023) and had requested the Minister to grant approval to the respondent to release necessary funds. This demonstrates that the Election Commission had accepted the respondent’s position and made the request to the Minister. In fact, the Election Commission copied the said letter to the respondent for his information. It is surprising to note that the petitioners did not disclose this fact to court for reasons best known to them and these facts were revealed from the material filed in these proceedings by the Attorney-General on 08th May 2023.

In view of these findings, we have arrived as discussed herein before, we will not proceed to examine other objections raised by the respondent.

Both applications are dismissed and make no order on costs.

Jayantha Jayasuriya, PC.

Chief Justice

Buwaneka Aluwihare, PC.

Judge of the Supreme Court

Priyantha Jayawardena, PC.

Judge of the Supreme Court

Vijith K. Malalgoda, PC.

Judge of the Supreme Court

Murdu N.B. Fernando, PC.

Judge of the Supreme Court