

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

In the matter of an Appeal

1. N.W.E.Buwaneka Lalitha
Keembiela, Beddegama, Galle.

SC Appeal 99/2017
SC/SPL/LA/109/2017
CA (WRIT) 362/2015

2. J.K.Amarawardhana
8, Bovitiyamaulla,
Yatalamatta.

3. A.C.Gunasekera
“Lakshmi”, Unawatuna,
Galle.

4. J.K.Wijesinghe.
48-10A, Main Street,
Ambalangoda

5. H.L.Prasanna Deepthilal
601/1, Visakam Road,
Galle.

Petitioners

-Vs-

1. Geetha Samanmali Kumarasinghe
No.2, Temple Road,
Nawala, Rajagiriya.

2. M.N.Ranasinghe

Controlller General of Immigration
and Emigration
Department of Immigration and
Emigration
41, Ananda Rajakaruna Mawatha,
Colombo 10.

3. Mahinda Amaraweera
Secretary.
United People's Freedom Alliance,
301, T.B.Jayah Mawatha,
Colombo 10.
4. Dhammika Dassanayake.
Secretary General of Parliament.
Parliament of Sri Lanka,
Sri Jayawardenapura,
Kotte.

Respondents

AND NOW

Geetha Samanmali Kumarasinghe
No.2, Temple Road,
Nawala, Rajagiriya.

**1st Respondent Petitioner-
Appellant**

1. N.W.E.Buwaneka Lalitha
Keembiela, Beddegama,
Galle.
2. J.K.Amarawardhana
8, Bovitiamaula,

Yatalamatta.

3. A.C.Gunasekera
“Lakshmi”, Unawatuna, Galle.
4. J.K.Wijesinghe.
48-10A, Main Street,
Ambalangoda
5. H.L.Prasanna Deepthilal
601/1, Visakam Road,
Galle.

Petitioner-Respondents

1. M.N.Ranasinghe
Controlller General of Immigration
and Emigration
Department of Immigration and
Emigration
41, Ananda Rajakaruna Mawatha,
Colombo 10.
2. Mahinda Amaraweera
Secretary.
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Colombo 10.
3. Dhammika Dassanayake.
Secretary General of Parliament.
Parliament of Sri Lanka,
Sri Jayawardenapura,
Kotte.

Respondents-Respondents

Ihala Medagama Gamage Piyasena
 “Sandasiri”, Medagama,
 Neluwa.

Added Respondent

Before : Priyasath Dep PC Chief Justice
 B P Aluwihare PC J
 Sisira J de Abrew J
 Anil Goonerathne J
 Nalin Perera J

Counsel : Romesh de Silva PC with Sugath Caldera, Niran Ankitel and
 Harith de Mel for the 1st Respondent-Appellant.
 J C Waliamuna PC with Pulasthi Hewamanna and
 Senura Abeywardena for the Petitioner-Respondents
 Faiz Musthapa PC with Chandaka Jayasundera PC,
 Pulasthi Rupasinghe, Randika de Silva Nuwantha Satharasinghe and
 Keerthi Thilakaratne for the 2nd Respondent-Respondent.
 Suren Fernando with Luwie Ganeshathasan and K Wickramanayake
 For the Added Respondent.
 Nerin Pulle DSG with Suren Gnanaraj SC the 1st and 3rd
 Respondent-Respondents

Written
 Submissions
 tendered on : 10.10.2017

Argued on : 28.9.2017 and 3.10.2017

Decided on : 2.11.2017

Sisira J De Abrew J.

The Petitioner-Respondents in this case filed case No. CA (Writ) 362/2015 in the Court of Appeal challenging the 1st Respondent-Petitioner-Appellant (hereinafter referred to as the 1st Respondent-Appellant) to show the authority

under which she claims to hold office as a Member of Parliament. The Petitioner-Respondents by their petition filed in the Court of Appeal moved inter alia the following reliefs.

1. Issue a mandate in the nature of Quo Warranto requiring the 1st Respondent-Appellant to show by what authority she claims to hold office as a Member of Parliament [vide paragraph (b) of the prayer to the petition].
2. Issue a mandate in the nature of Quo Warranto declaring that the 1st Respondent-Appellant is disqualified to be a Member of Parliament and thus not entitled to hold office as a Member of Parliament.

The Court of Appeal by its judgment dated 3.5.2017, issued a writ of Quo Warranto declaring that the 1st Respondent-Appellant is disqualified to be a Member of Parliament and that she is not entitled to hold the office of Member of Parliament. Being aggrieved by the said judgment of the Court of Appeal, the 1st Respondent-Appellant has appealed to this court. This court on 15.5.2017 by its majority decision granted leave to appeal on questions of law stated in paragraphs 26(a) to (n) of the petition of appeal filed on 9.5.2017 which are set out below.

- a) Did not their Lordships of the Court of Appeal err in deciding that Article 91(1)(d)(13) of the Constitution operated to prevent the Petitioner from being qualified as a member of Parliament and/or to sit and vote in Parliament;
- b) Did not their Lordships of the Court of Appeal err in deciding that the Petitioner was a citizen of Switzerland when she was elected to Parliament and/or during the pendency of the application in the Court of Appeal contrary to prevailing Law;
- c) Did not their Lordships of the Court of Appeal err in failing to sufficiently apprehend and/or consider and/or appreciate the application of Swiss law to the citizenship status of the Petitioner;

- d) Did not their Lordships of the Court of Appeal err in deciding that the Court of Appeal had jurisdiction to hear the aforesaid matter;
- e) Did not their Lordships of the Court of Appeal err in failing to sufficiently consider and/or appreciate that the relief prayed in the Petition could not be granted on account of the powers, immunities and privileges enjoyed by Parliament and/or Parliamentarians;
- f) Did not their Lordships of the Court of Appeal err in failing to sufficiently consider and/or appreciate that Parliament is the sole judge of its composition;
- g) Did not their Lordships of the Court of Appeal err in failing to sufficiently consider and/or appreciate that the Court has no jurisdiction in respect of the composition of Parliament otherwise than as provided statutorily by Parliament;
- h) Did not their Lordships of the Court of Appeal err in failing to sufficiently consider and/or appreciate that the writ of quo warranto does not lie in respect of a member of Parliament;
- i) Did not their Lordships of the Court of Appeal err in failing to sufficiently consider and/or appreciate that the discretionary remedy of a mandate in the nature of a writ of quo warranto required the dismissal of the application on account of the availability of alternate constitutional and statutory remedies;
- j) Did not their Lordships of the Court of Appeal err in failing to consider and/or appreciate that the discretionary remedy of a mandate in the nature of a writ of quo warranto required the dismissal of the application on account of the unenforceability of the relief prayed for;
- k) Did not their Lordships of the Court of Appeal err in failing to consider and/or appreciate that the discretionary remedy of a mandate in the nature of

a writ of quo warranto required the dismissal of the application on account of non-joinder of necessary parties;

l) Did not their Lordships of the Court of Appeal err in failing to consider and/or appreciate that the discretionary remedy of a mandate in the nature of a writ of quo warranto required the dismissal of the application on account of laches;

m) Did not their Lordships of the Court of Appeal err in failing to consider and/or appreciate that the discretionary remedy of a mandate in the nature of a writ of quo warranto required the dismissal of the application on account of non-joinder of necessary parties;

n) Did not their Lordships of the Court of Appeal err in deciding that the Petitioner was a citizen of
This is an incomplete question

This Court by majority decision stayed the operation of the judgment of the Court of Appeal dated 3.5.2017 until final determination of this case.

Learned President's Counsel for the 1st Respondent-Appellant contended that the 1st Respondent-Appellant had sent document marked X1 to Swiss Authorities in Switzerland and document marked X2 to the Ambassador, Switzerland Embassy in Colombo. But these letters have been produced in this court from the custody of the 1st Respondent-Appellant. Were these letters in fact sent to the Swiss Authorities? They were not produced in the Court of Appeal. They do not form Part of the Court of Appeal record. This court is invited to examine the legality and correctness of the judgment of the Court of Appeal. The Court of Appeal was not given an opportunity to examine these documents. Considering all the above matters, I refuse to consider these documents marked X1 and X2.

One of the important questions that must be decided in this case is whether the 1st Respondent-Appellant (Geetha Samanmali Kumarasinghe) was holding dual citizenship on the day of the Parliamentary Election which was on 17.8.2015. I now advert to this question. The 1st Respondent-Respondent, the Controller General of Immigration and Emigration, in his affidavit filed in the Court of Appeal, states that 1st Respondent-Appellant (Geetha Samanmali Kumarasinghe) was granted dual citizenship (Sri Lanka and Switzerland) on 29.8.2006 and dual citizenship certificate No.17096 was issued to her. The 1st Respondent-Appellant too in her written submission filed in this court on 14.7.2017 admits that she got married to a citizen of Switzerland and by virtue of the said marriage, she was granted citizenship of Switzerland by operation of law. It is important to note that the 1st Respondent-Appellant had submitted to the Controller General of Immigration and Emigration, the 1st Respondent-Respondent a letter dated 11.9.2015 alleged to have been issued by Switzerland Authorities. This letter which has been addressed to the 1st Respondent-Appellant has been produced by the 1st Respondent-Respondent with his objection marked R2. The said letter states that 1st Respondent-Appellant had, on 25.8.2015, sent a request to Switzerland Authorities requesting that she be released from Switzerland citizenship. The said letter states that she has been released from Switzerland citizenship, but the same letter suggests that her release from the Switzerland citizenship has not been made absolute. The date of this letter is 11.9.2015.

As I pointed out earlier 1st Respondent-Appellant in her written submission filed in this court has admitted that she has been granted citizenship in Switzerland by virtue of her marriage to Switzerland citizen. Learned President's Counsel for the 1st Respondent-Appellant tried to contend that the 1st Respondent-Appellant has now given up the Switzerland citizenship. But has she, in fact, given up the

Switzerland citizenship? If so when did she do it? If she says that she has given up Switzerland citizenship she should state the date on which she gave it up because the Petitioner-Respondents in their petition state that she is a Switzerland citizen. The Petitioner-Respondents by producing current passport details of the 1st Respondent-Appellant marked P7 has proved the fact that there is an endorsement in her passport to the effect that she is a dual citizen. The 1st Respondent-Appellant too in her written submission filed in this court admits that she was a citizen of Switzerland. She is now trying to contend that she has given up the citizenship of Switzerland. Under these circumstances the burden shifts to the 1st Respondent-Appellant to prove the date on which she gave up citizenship of Switzerland. This view is supported by Sections 101, 103 and 106 of the Evidence Ordinance.

Section 101 of the Evidence Ordinance reads as follows:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

Section 103 of the Evidence Ordinance reads as follows:

“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is proved by any law that the proof of that fact shall lie on any particular person”

Illustration to this section is as follows:

“B wishes the court to believe that, at the time in question, he was elsewhere. He must prove it.”

Section 106 of the Evidence Ordinance reads as follows:

“When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

Illustration to this section reads as follows:

“A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

The 1st Respondent-Appellant is the best person to speak about the date on which she gave up the citizenship of Switzerland more than anybody. She even in her statement of objection and her affidavit filed in the Court of Appeal, does not state the date on which she gave up the citizenship of Switzerland. She has, by her letter dated 30.10.2015 marked R1 and produced by the Controller General of Immigration and Emigration, requested the said Controller to issue her a Diplomatic Passport and not to state in the Diplomatic Passport that she is a dual citizen as she has got herself released from the dual citizenship. But even in the said letter she does not state the date on which she ceased to be a Switzerland citizen. When the above matters are considered, her claim that she does not hold dual citizenship is very doubtful. It is significant to note that the Petitioner-Respondents state, in paragraph 11 of their petition filed in the Court of Appeal, that she is a dual citizen and produced the current passport details of the 1st Respondent-Appellant marked as P7. It has to be stressed here that her passport details marked P7 was produced by the Petitioner-Respondents and not by her. According to this document her current passport which is an official passport expires on 15.9.2017. The signature, photograph, date of birth, and the address of the passport holder appear in the said document marked P7. She has, in her statement of objections and the affidavit dated 10.2.2016 filed in the Court of Appeal, denied paragraph 11 of the petition. Meaning of this denial is that she has even denied her personal details. Can such denial be accepted?

Although she tried to rely on R2, the letter purported to have been issued by Switzerland Authorities, to prove that she has been released from Switzerland citizenship, paragraph 4 of the said letter raises a question whether she has been

released absolutely. When she was questioned about this matter in a letter addressed to her dated 2.11.2015 marked R5 by the Controller General of Immigration and Emigration, she has not replied according to the Controller General of Immigration and Emigration. The document marked P7 indicates that there is an endorsement in her passport to the effect that she is a dual citizen. This evidence is available in the copy of her passport (P7) produced by the Petitioner-Respondents. Expiry date of her passport according to P7 is 15.9.2017. The case was filed in the Court of Appeal on 16.9.2015. The 1st Respondent-Appellant filed her statement of objection in the Court of Appeal on 10.2.2016. If the 1st Respondent-Appellant claims that she has got herself released from Switzerland citizenship she should have submitted her passport to the Controller General of Immigration and Emigration requesting him to make an endorsement nullifying her previous endorsement relating to dual citizen. Has she done it? If she has done it, this endorsement nullifying the previous endorsement should be available in her passport. But she has not produced a copy of her passport to court. In these circumstances, it was incumbent upon her to produce a copy of her passport to court especially in view of the fact that Petitioner-Respondents have, along with their petition, produced her passport details marked P7 which carries an endorsement that she is a dual citizen. In these circumstances, court can apply Section 114(f) of the Evidence Ordinance which reads as follows: *“The court may presume that evidence which could be and is not produced would if produced, be unfavourable to the person who withholds it.”* The 1st Respondent-Appellant who should have her passport in her possession did not produce a copy of her passport in court and withheld it from court. Therefore, the court can presume that she (the 1st Respondent-Appellant) did not produce a copy of her passport as the production of the same in court would be unfavourable to her and further court can presume

that her passport carries an endorsement to the effect that she is a dual citizen. In fact her passport details marked as P7 establishes the fact that there is such an endorsement in her passport. As I pointed out earlier, the letter marked R2 states that she has been released from Switzerland citizenship, but the same letter suggests that her release from the Switzerland citizenship has not been made absolute. The date of this letter is 11.9.2015. When all the above matters are considered, it is clear that she has not got **any release** from Switzerland citizenship prior to 11.9.2015. Thus it is clear that even on 1.9.2015 (the day of taking oaths as a Member of Parliament) she was a citizen of Switzerland.

The letter marked R2 states that 1st Respondent-Appellant had, on 25.8.2015, sent a request to Switzerland Authorities requesting that she be released from Switzerland citizenship. It is clear from the contents of the letter (marked R2) that on 25.8.2015 the 1st Respondent-Appellant was a citizen of Switzerland. The Parliamentary Election was held on 17.8.2015. I again state here that the letter marked R2 was submitted to the Controller General of Immigration and Emigration by the 1st Respondent-Appellant (Geetha Samanmali Kumarasinghe) and this letter was annexed to the affidavit of the Controller General of Immigration and Emigration marked R2. The Court of Appeal by its order dated 28.9.2015, had directed the Controller General of Immigration and Emigration to produce all the documents relating to the citizenship status of the 1st Respondent-Appellant. It appears that the Controller General of Immigration and Emigration in compliance with the said directions has produced the documents marked R1 to R5. It has to be stressed here that the document marked R2 states that 1st Respondent-Appellant had made a request on 25.8.2015 to release her from Switzerland citizenship. When contents of the document marked R2 are considered, it can be concluded that she (Geetha Samanmali Kumarasinghe) had admitted that she has

not given up her Switzerland citizenship even on 25.8.2015. It is clear from the above letter (R2) that the 1st Respondent-Appellant was holding a dual citizenship (Switzerland and Sri Lanka) when she was elected as a Member of Parliament on 17.8.2015 (the day of the Parliamentary Election). Was the 1st Respondent-Appellant (Geetha Samanmali Kumarasinghe) qualified to be elected as a Member of Parliament on 17.8.2015 when she was holding dual citizenship (Switzerland and Sri Lanka)? To find an answer to this question it is important to consider Article 91(1)(d)(xiii) of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the Constitution). Article 91(1)(d)(xiii) of the Constitution reads as follows.

“No person shall be qualified to be elected as a Member of Parliament or to sit and vote in Parliament if he is a citizen of Sri Lanka who is also a citizen of any other country.”

What is the day on which a candidate becomes elected to be a Member of Parliament? It is the day of the Parliamentary Election. What is the day on which a candidate becomes qualified to sit and vote in Parliament? It is the day of taking oaths as a Member of Parliament and thereafter. When I consider the Article 91(1)(d)(xiii) of the Constitution, I hold that if a candidate in a Parliamentary Election is a citizen of Sri Lanka and any other country

1. on the day of the Parliamentary Election or
2. on the day of taking oaths as a Member of Parliament

he cannot be considered as a Member of Parliament and that the office of such person as a Member of Parliament is a nullity. I further hold that after taking oaths as a Member of Parliament, if he becomes a citizen of any other country or continues to be a citizen of any other country, he too cannot be considered as a

Member of Parliament and that the office of such person as a Member of Parliament is a nullity.

I have earlier pointed out that the 1st Respondent-Appellant was holding a dual citizenship (Switzerland and Sri Lanka) when she was elected as a Member of Parliament on 17.8.2015. Considering Article 91(1)(d)(xiii) of the Constitution, I hold that a person who is holding a dual citizenship on the day of the Parliamentary Election was not qualified to be elected as a Member of Parliament and office of such person as a Member of Parliament is a nullity. In the present case, 1st Respondent-Appellant (Geetha Samanmali Kumarasinghe) was holding a dual citizenship (Switzerland and Sri Lanka) on the day of the Parliamentary Election (17.8.2015). Considering all the above matters, I hold that the 1st Respondent-Appellant (Geetha Samanmali Kumarasinghe) was not qualified to be elected as a Member of Parliament on 17.8.2015; that she being elected as a Member of Parliament is a nullity; that she was not qualified to take oaths as a Member of Parliament on 1.9.2015; that therefore she could not hold the office of Member of Parliament; that she cannot be considered as a Member of Parliament; and that her office as a Member of Parliament is a nullity.

Learned President's Counsel for the 1st Respondent-Appellant tried to contend that Parliament (Powers and Privileges) Act applies to the 1st Respondent-Appellant. I now advert to this contention. I have earlier held that the 1st Respondent-Appellant could not be considered as a Member of Parliament and that her office as a Member of Parliament is a nullity. If she cannot be considered as a Member of Parliament and her office as a Member of Parliament is a nullity, Parliament (Powers and Privileges) Act does not apply to her. Learned President's Counsel for the 1st Respondent-Appellant further contended that Article 140 of the Constitution should be invoked subject to Article 67 of the Constitution. He

advanced this contention since Article 140 of the Constitution contains the words ‘subject to Constitution’. Article 67 of the Constitution reads as follows.’

“The privileges, immunities and powers of Parliament and of its Members may be determined and regulated by Parliament by law and until so determined and regulated, the provisions of the Parliament (Powers and Privileges) Act, shall, *mutatis mutandis*, apply”

I have earlier held that the 1st Respondent-Appellant could not be considered as a Member of Parliament. If she cannot be considered as a Member of Parliament, the Parliament (Powers and Privileges) Act does not apply to her. If the Parliament (Powers and Privileges) Act does not apply to her, she cannot invoke Article 67 of the Constitution. For the above reasons, I reject the above contention of learned President’s Counsel for the 1st Respondent-Appellant.

Learned President’s Counsel for the 1st Respondent-Appellant next contended that conferring of Switzerland citizenship was an involuntary act and that she had not applied for the citizenship of Switzerland and that citizenship of Switzerland was given to her by operation of law in Switzerland. He further contended that a woman automatically obtains citizenship of Switzerland upon marrying a Swiss national and that since the 1st Respondent-Appellant married a Swiss national, she automatically got the citizenship of Switzerland. He further contended that the 1st Respondent-Appellant should not be unseated from the Parliament as conferring of Switzerland citizenship was not given on an application made by her. He also cited a judgment of Australian High Court to support his contention. In *Sykes Vs Cleary and Others* [1992] 176 CLR 77 decided on 25.11.1992 (a copy was produced in open court by learned President’s Counsel for the 1st Respondent-Appellant) in paragraph 52, Australian High Court made the following observation.

“But there is no reason why section 44(i) should be read as if it were intended to give unqualified effect to the rule of international law. To do so

*might well result in the disqualifications in Australian citizens on whom there was imposed involuntarily by operation of foreign law a continuing foreign nationality, notwithstanding that **they had taken reasonable steps to renounce that foreign nationality**. It would be wrong to interpret constitutional provisions in such a way as to disbar an Australian citizen who had taken all reasonable steps to divest himself or herself of any conflicting allegiance”* (emphasis added).

In the present case has the 1st Respondent-Appellant taken all reasonable steps to renounce her Switzerland citizenship? The answer is in the negative. She has only written a letter. There is no evidence to prove that she has even paid State fee amounting CHF 100 (100 Swiss Francs) stated in the letter marked R2. Therefore, the above judicial decision has no application to present case. In any event I must state here that it is not necessary for me to consider the said judicial decision of the Australian High Court when our Constitution is very clear on the question in hand. Be that as it may, the contention of learned President’s Counsel for the 1st Respondent-Appellant is that since the 1st Respondent-Appellant married a Swiss national she automatically got the citizenship of Switzerland by operation of Switzerland law and that she did not make any application to get the citizenship of Switzerland and that it was an involuntary act. Has the 1st Respondent-Appellant taken up this position in his statement of objection and affidavit filed in the Court of Appeal? The answer is in the negative. How does the Court of Appeal know that she got married to a Swiss gentleman? The 1st Respondent-Appellant has not produced any material to prove the above facts. The answer to the above question is in the negative. Although learned President’s Counsel for the 1st Respondent-Appellant contended so, the 1st Respondent-Appellant in her statement of objection and the affidavit (dated 10.2.2016) filed in the Court of Appeal does not state that

she is a dual citizen of Switzerland and Sri Lanka and that she got married to a Swiss gentleman. In fact, in her statement of objections and the affidavit filed in the Court of Appeal, she has stated that she is not a dual citizen (paragraph 5). The fact that she got married to a Swiss national and she automatically got citizenship of Switzerland has been stated in the written submission dated 14.7.2017 and her affidavit filed in this court. The stand she has taken up in her affidavit and the statement of objections filed in the Court Appeal is different from the stand that she has taken up in the said written submissions. For all the aforementioned reasons, I reject the above contention of learned President's Counsel for the 1st Respondent-Appellant. There is another ground to reject the above contention of learned President's Counsel for the 1st Respondent-Appellant. I would like to state here that I have earlier held that the 1st Respondent-Appellant was not qualified to be elected as a Member of Parliament on 17.8.2015 (day of the Parliamentary election). Whether conferring of citizenship of Switzerland is voluntary or involuntary, on the day of the Parliamentary election the 1st Respondent-Appellant was disqualified to be elected as a Member of Parliament. Considering the above matters, I reject the contention of learned President's Counsel for the 1st Respondent-Appellant.

Learned President's Counsel for the 1st Respondent-Appellant next contended that the Court Appeal did not have jurisdiction in terms of Article 140 of the Constitution to hear this case as 1st Respondent-Appellant taking oaths as a Member of Parliament amounts to proceedings in Parliament. He heavily relied upon the judgment of this court in the case of Attorney General Vs Shirani Bandaranayake SC Appeal 67/2013 decided on 21.2.2014 (hereinafter referred to as Shirani Bandaranayake's case). In Shirani Bandaranayake's case, there was a decision of Parliament to appoint a select committee to look into the conduct of

Shirani Bandaranayake who was the Chief Justice of the country at that time and the select committee appointed by Parliament took a decision. The decision of the select committee was challenged in the Court of Appeal. Thus it is very clear in that case that what was challenged in the Court of Appeal was the proceedings in Parliament. In the present case the Petitioner-Respondents challenged in the Court of Appeal the authority under which the 1st Respondent-Appellant claimed to hold the office as a Member of Parliament. The Petitioner-Respondents have taken up the position that the 1st Respondent-Appellant was a dual citizen of Sri Lanka and Switzerland and that she was disqualified to be a Member of Parliament in terms of Article 91(1)(d)(xiii) of the Constitution. The Petitioner-Respondents in this case challenged the election of the 1st Respondent-Appellant as a Member of Parliament. I have earlier held that the 1st Respondent-Appellant, in terms of Article 91(1)(d)(xiii) of the Constitution, was not qualified to be elected as a Member of Parliament on 17.8.2015 and that she was disqualified to take oaths as a Member of Parliament. When I consider the above matters, I am unable to agree with the above contention of learned President's Counsel for the 1st Respondent-Appellant and reject the said contention.

Learned President's Counsel for the 1st Respondent-Appellant next contended that a writ of quo warranto would not lie against a Member of Parliament. What is quo warranto? Quo warranto is a remedy available to call upon a person who is holding a public office to show the authority under which he claims to hold the office. This view is supported by the following legal literature. In the book titled 'Constitutional Law and Administrative Law of Sri Lanka (Ceylon)' by JAL Cooray at page 364 the learned Author says as follows:

“Under the law the writ of quo warranto may be granted by the Supreme Court to determine whether the holder of a public office is legally entitled to

it.” In Sri Lanka in the absence of any procedure under the Local Authorities Elections Ordinance writ of quo warranto lies to question the election of a member of a local government authority who has acted in that office.” At page 365 the learned Author states as follows: “Even if the validity of an election cannot be questioned by a quo warranto, the writ is nevertheless available for the purpose of calling upon a person who is prima facie disqualified from holding a particular office to show upon what authority he claims to hold such office.”

In the book titled ‘Principles of Administrative Law in Sri Lanka’ by Sunil F A Cooray at page 445 the learned Author says as follows:

“If the office in question is a ‘public office’, for quo warranto to be available it must be shown that the election/appointment of the de facto holder of it is a nullity. On the question whether the election/appointment is a nullity, the relevant facts and the applicable law must be considered in each case. The election/appointment may be a nullity for different reasons, namely, absence of a necessary qualification for the office, presence of a disqualification for the office, incorrect procedure adopted for the election/appointment, or the wrong person or body has held or conducted the election or made the appointment.”

In Dilan Perera Vs Rajitha Senaratne [2000] 2 SLR 79 at page 100 Justice Yapa observed as follows:

“It is to be observed that quo warranto is a remedy available to call upon a person to show by what authority he claims to hold such office. Therefore, the basic purpose of the writ is to determine whether the holder of a public office is legally entitled to that office. If a person is disqualified by law to hold statutory office the writ is available to oust him.”

Having considered the above legal literature, I hold that writ of quo warranto is a remedy available to call upon a person to show the authority under which he holds the public office and that if the holder of the public office is not legally entitled to hold the public office, court has the power to grant a writ of quo warranto to oust him.

Article 91(1)(d)(xiii) of the Constitution clearly states that no person shall be qualified to be elected as a Member of Parliament or to sit and vote in Parliament if he is a citizen of Sri Lanka who is also a citizen of any other country. The election that the 1st Respondent-Appellant was elected as a Member of Parliament was held on 17.8.2015 and she took oaths as a Member of Parliament on 1.9.2015. I have earlier held that the 1st Respondent-Appellant was not qualified to be elected as a Member of Parliament on 17.8.2015; that therefore she could not hold the office of Member of Parliament; that she could not be considered as a Member of Parliament; and that she being elected as a Member of Parliament on 17.8.2015 is a nullity. According to the aforementioned legal literature, writ of quo warranto is available to oust her from the office of Member of Parliament. Therefore, the contention that writ of quo warranto would not lie against a Member of Parliament lacks merit. For the above reasons, I reject the contention of learned President's Counsel for the 1st Respondent-Appellant.

Learned President's Counsel for the 1st Respondent-Appellant drawing our attention to provisions of Parliamentary Election Act No 1 of 1981 next contended that the only way that 1st Respondent-Appellant could have been removed from the office of Member of Parliament by filing an election petition under the provisions of Parliamentary Election Act No 1 of 1981 and that Article 140 of the Constitution could not be invoked to remove a Member of Parliament. He contended that an election petition must be filed within 21 days from the date of election and such an

election petition has to be filed by two sets of people described in Section 95 of Parliamentary Election Act No 1 of 1981. He contended that removal of Members of Parliament could not be done as and when people choose to do so. If the contention of learned President's Counsel for the 1st Respondent-Appellant is accepted as correct, then Article 140 of the Constitution cannot be invoked and the provisions of Parliamentary Election Act No 1 of 1981 would oust the jurisdiction conferred to Superior Courts by Article 140 of the Constitution. Article 140 of the Constitution reads as follows:

“Subject to the provisions of the Constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any court of First Instance or tribunal or other institution and grant and issue, according to law, orders in the nature of writs *of certiorari, prohibition, procedendo, mandamus and quo warranto* against the judge of any Court of First Instance or tribunal or other institution or any other person.”

Learned President's Counsel for the 1st Respondent-Appellant submitted that Article 140 of the Constitution should be exercised subject to the law. He advanced this contention since Article 140 of the Constitution contains the word 'law'. Does the Article 140 of the Constitution state that the Court of Appeal shall have power subject to the provisions of Law? No it does not say so. If any Article of the Constitution states that it must be used subject to any provisions of law then the contention that such an Article must be used subject to the law can be successful. Are there such provisions in the Constitution? For the purpose of clarity I would like to refer to Article 138(1) of the Constitution which reads as follows.

“The Court of appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance, tribunal other institution and sole and exclusive cognizance, by way of appeal, revision or *restitutio in integrum*, of all causes, suits, actions,

prosecutions, matters and things of which such High Court, Court of First Instance, tribunal or other institution may have taken cognizance;

Provided that no judgment, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.”

The above Article states that the Court of appeal shall have power to exercise appellate jurisdiction subject to the provisions of the Constitution or **of any law**. But Article 140 of the Constitution does not state contain the words ‘subject to provisions of any law.’ The Article 140 of the Constitution states that ‘subject to the provisions of the Constitution the Court of Appeal shall have full power and authority’. Therefore, can the contention that Article 140 of the Constitution should be invoked subject to the provisions of Parliamentary Election Act No 1 of 1981 be accepted? In other words can the Article 140 of the Constitution be ousted by ordinary legislation? In finding an answer to this question it is necessary to consider certain judicial decisions.

In *Sirisena Cooray Vs Tissa Dias Bandaranayake* [1999] 1SLR page 1 this court held as follows:

“The writ jurisdiction of the Superior Courts is conferred by Article 140 of the Constitution. It cannot be restricted by the provisions of ordinary legislation contained in the ouster clauses enacted in sections 9(2) and 18A of the Special Presidential Commission of Inquiry Law or section 2 of the Interpretation Ordinance.”

In *Atapattu and Others Vs Peoples Bank* [1997] 1 SLR 208 page 208 at page 222 This Court held as follows:

“Apart from any other consideration, if it became necessary to decide which was to prevail - an ouster clause in an ordinary law or a

Constitutional provision conferring writ jurisdiction on a Superior Court, "subject to the provisions of the Constitution"- I would unhesitatingly hold that the latter prevails, because the presumption must always be in favour of a jurisdiction which enhances the protection of the Rule of Law, and against an ouster clause which tends to undermine it. But no such presumption is needed, because it is clear that the phrase "subject to the provisions of the Constitution" was necessary to avoid conflicts between Article 140 and other Constitutional provisions - such as Article 80(3), 120, 124, 125, and 126(3). That phrase refers only to contrary provisions in the Constitution itself, and does not extend to provisions of other written laws, which are kept alive by Article 168(1)"

In *Moosajeets Limited Vs Arthur and Others* [2006] 1SLR 65 this court observed the following facts:

"The 1st respondent tenant applied to the 2nd respondent (Commissioner for National Housing) under section 13 of the Ceiling on Housing Property Law, No. 1 of 1973 ("CHP Law") to purchase the house in dispute owned by the appellant. On 25.01.1984 the Commissioner refused the application holding the premises were business premises under section 47 of the CHP Law. On appeal to the Board of Review under section 39(1) of the Law, the Board held that it was a house as it had been used for residence from 1943. The Court of Appeal refused an application by the appellant to quash the decision of the Board by certiorari. The Court held that in view of section 22 of the Interpretation Ordinance, read with section 39(3) of the CHP Law, the court's jurisdiction was ousted as the decision

of the Board using the test of user was not ex facie outside the Board's jurisdiction and by its order dated 09.02.2001, refused the application for a writ." This court held as follows:

"In the above circumstances, the decision of the Board of Review was ultra vires and a nullity-outside its jurisdiction and the appellant was entitled to a writ of certiorari notwithstanding section 39(3) of the CHP Law. Further, Article 140 of the Constitution prevailed over section 22 of the Interpretation Ordinance. For that reason also, section 39(3) of the CHP Law had no application."

Article 140 of the Constitution is a constitutional provision. Constitution is the Supreme Law of the country. Considering all the above matters, I hold that the ordinary legislation cannot oust the powers conferred to the Superior Courts under Article 140 of the Constitution. When I consider the aforementioned legal literature and the above observation, the contention of learned President's Counsel for the 1st Respondent-Appellant that the only way to remove a Member of Parliament was by filing an election petition and that Article 140 of the Constitution cannot be invoked to remove a Member of Parliament cannot be accepted and is hereby rejected.

Considering all the above matters, I hold that the 1st Respondent-Appellant was disqualified to be elected as a Member of Parliament on 17.8.2015 and that she is not entitled to hold the office of Member of Parliament. In view of the conclusion reached above, the questions of law stated in paragraphs 26 (a) to 26(j) are answered as follows: The Court of Appeal did not make any error in its judgment dated 3.5.2017. The questions of law set out in paragraphs 26(k) to 26(m) do not arise for consideration. Paragraph 26(n) is incomplete. I have earlier held that that the 1st Respondent-Appellant (Geetha Samanmali Kumarasinghe) was not qualified to be elected as a Member of Parliament on 17.8.2015; that the 1st Respondent-Appellant being elected as a Member of Parliament is a nullity; that

she was not qualified to take oaths as a Member of Parliament on 1.9.2015; that therefore she could not hold the office of Member of Parliament; and that she cannot be considered as a Member of Parliament; that her office as a Member of Parliament is a nullity; and that writ of quo warranto is available to oust her from the office of Member of Parliament.

In view of all the aforementioned matters, I hold that the Court of Appeal was correct when it issued a writ of quo warranto declaring that the 1st Respondent-Appellant was disqualified to be a Member of Parliament and that she is not entitled to hold the office of Member of Parliament. For the above reasons, I affirm the judgment of the Court of Appeal and dismiss the appeal of the 1st Respondent-Appellant with costs. In view of the conclusion reached above, the stay order issued by majority decision of the court comes to an end.

Appeal dismissed

Judge of the Supreme Court.

Priyasath Dep PC CJ

I agree.

Chief Justice

BP Aluwihare PC J

I agree.

Judge of the Supreme Court.

Anil Gooneratne J

I agree.

Judge of the Supreme Court.

Nalin Perera J

I agree.

Judge of the Supreme Court.

