

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

*In the matter of an application in terms of  
Article 126 read with Article 17 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

S C (F R) Application No. 216/2014

W. A. D. S. Wanasinghe,  
Hanthinawa,  
Halmillawewa  
Kurunegala.

**PETITIONER**

-Vs-

01. Kamal Paliskara  
Assistant Superintendent of Police (II)  
Nugegoda.

02. Inspector General of Police,  
Police Headquarters,  
Colombo 01.

03. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**Before:**                    **P. PADMAN SURASENA J**

**E. A. G. R. AMARASEKARA J**

**A. L. S. GOONERATNE J**

Counsel:                        Ravindranath Dabare for the Petitioner.

                                      Madhawa Tennakoon SSC for the Hon. Attorney General.

Argued on     :                15-03-2021

Decided on    :                23-06-2021

**P Padman Surasena J**

The Petitioner, filed the Petition pertaining to the instant application in this Court on 18-07-2014, praying *inter alia*, for;

- i.    leave to proceed under Article 11, 12 (1) and 13 (1) of the constitution;
- ii.   a declaration that the 1<sup>st</sup> Respondent/all the Respondents and/or the state has infringed or has been in continuous infringement of the fundamental rights guaranteed to the petitioner under Article 11, 12 (1) and 13 (1) of the Constitution;
- iii.   compensation of Five Million Rupees (Rs. 5,000,000/=).

This Court on 13-10-2014, having heard the submissions of the learned counsel for the Petitioner, had decided to grant leave to proceed in respect of the alleged violations of Article 12(1) of the Constitution.

When the matter was taken up for argument on 15-03-2021, the learned Senior State Counsel raised a Preliminary Objection against the maintainability of this application on the basis that the application of the Petitioner has been filed out of time provided by law.

The learned counsel for the Petitioner sought to counter that argument by stating that the complained acts by the 1<sup>st</sup> Respondent were continuous infringements.

Although the Petitioner in his petition, has alleged infringements of fundamental rights guaranteed to him under Article 11, 12 (1) and 13 (1) of the Constitution,<sup>1</sup> this Court, as has been already mentioned above, has granted leave to proceed only in respect of the alleged infringements of Article 12(1) of the Constitution.

Out of the averments in the petition, one can observe that the petitioner has alleged only the following instances as acts of infringement by the 1<sup>st</sup> Respondent.

- i. The 1<sup>st</sup> Respondent who was an Assistant Superintendent of Police in Nugegoda Police Division, has sent a Police message,<sup>2</sup> to Hettipola Police Station to inform the petitioner to appear before him at 10.30 AM on 24<sup>th</sup> October 2013.
- ii. The 1<sup>st</sup> Respondent on 24<sup>th</sup> October 2013 (presumably after the Petitioner had appeared before him consequent to the above message), had allowed the management of Nilkem (pvt) Ltd. to question and harass the Petitioner.
- iii. When the Petitioner attended the 1<sup>st</sup> Respondent's office on 24<sup>th</sup> October 2013, the 1<sup>st</sup> Respondent had 'harassed and made demands from the Petitioner without taking down any proper complaint by anybody.
- iv. The 1<sup>st</sup> Respondent on 24<sup>th</sup> October 2013 had obtained the signature of the petitioner to a document containing eight pages and forced the Petitioner to pay Rs. 942,214.13 to Nilkem (pvt) Ltd. without affording an opportunity to explain what actually had happened.<sup>3</sup>
- v. The 1<sup>st</sup> Respondent has again summoned the Petitioner on 07<sup>th</sup> November 2013 and insisted that the Petitioner must pay the alleged sum of money due to Nilkem (pvt) Ltd.<sup>4</sup>
- vi. The 1<sup>st</sup> Respondent has again sent a Police message,<sup>5</sup> informing the Petitioner to come to his office at 10.30 AM on 05<sup>th</sup> December 2013.

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<sup>1</sup> Paragraph 29 and prayers of the Petition dated 18.07.2014.

<sup>2</sup> Produced marked as **P-2**.

<sup>3</sup> Paragraph 14 of the Petition.

<sup>4</sup> Paragraph 16 of the Petition.

<sup>5</sup> Produced marked as **P-3**.

- vii. The 1<sup>st</sup> Respondent has sent another Police message,<sup>6</sup> to Hettipola Police Station to inform the Petitioner to come to his office at 11.00 AM on 12<sup>th</sup> December 2013.
- viii. On or about 12<sup>th</sup> December 2013, the 1<sup>st</sup> Respondent had demanded the Petitioner to withdraw the case filed by the Petitioner in the District Labour office Kuliyaipitiya and the complaint lodged at the Police Station Hettipola. He had also threatened to file criminal proceedings against the Petitioner if he ignores the said demands.<sup>7</sup> According to the Petitioner, this was despite the Petitioner proving before the 1<sup>st</sup> Respondent that he had already settled all the monies due to Nilkem (pvt) Ltd.<sup>8</sup>
- ix. On or about 22<sup>nd</sup> December 2013, on the instructions of the 1<sup>st</sup> Respondent, Nilkem (pvt) Ltd had lodged complaints at the Special Investigation Unit – Nugegoda. Consequently, the Petitioner had to appear in the Special Investigation Unit - Nugegoda on 07<sup>th</sup> January 2014.<sup>9</sup>
- x. On 07<sup>th</sup> January 2014, the 1<sup>st</sup> Respondent had arranged the petitioner to go to Hettipola Police Station accompanied by P C 30674 Priyankara to bring back a Motor cycle to Colombo. The Petitioner, after bringing and handing over the said motor cycle to Mirihana Police Station, was arrested and produced before the Magistrate who had enlarged the Petitioner on bail.<sup>10</sup>

According to the Petitioner, the 1<sup>st</sup> Respondent through the above acts, has infringed the fundamental rights guaranteed to him under Article 12 (1) of the Constitution. The Petitioner has stated in his petition that the above acts are continuing infringements.<sup>11</sup>

The Petitioner has filed the instant application on 18-07-2014. The latest alleged act of infringement, according to the petition, had occurred on the 07<sup>th</sup> January 2014. Thus, the Petitioner has filed the instant application more than six months after the aforesaid latest alleged act of infringement.

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<sup>6</sup> Produced marked as **P-4**.

<sup>7</sup> Paragraph 25 of the petition.

<sup>8</sup> Paragraph 21 of the petition.

<sup>9</sup> Paragraph 26 of the petition.

<sup>10</sup> Paragraphs 27 and 28 of the petition.

<sup>11</sup> Paragraph 29 of the petition.

Next question to be considered is whether the alleged infringements are continuing infringements as alleged by the learned counsel for the petitioner. According to the Petitioner, the 1<sup>st</sup> Respondent who was an Assistant Superintendent of Police in Nugegoda Police Division, has allegedly violated his fundamental rights, by sending several Police messages informing him to come to the 1<sup>st</sup> Respondent's office, by threatening, by harassing, by demanding certain acts to be done and finally by arresting and producing him before Nugegoda Magistrate. The final act had occurred on 07<sup>th</sup> January 2014. The Petitioner does not allege any act, attributable to the 1<sup>st</sup> Respondent, as having occurred thereafter. At its least, there is no material before Court even to ascertain whether the 1<sup>st</sup> Respondent, during the period of more than six months after 07<sup>th</sup> January 2014, in fact continued to be an Assistant Superintendent of Police in Nugegoda Police Division. Moreover, it must be noted that the Petitioner has only made allegations of violations against the 1<sup>st</sup> Respondent. In the above circumstances, and having regard to the nature of the acts of infringements alleged against the 1<sup>st</sup> Respondent, I am of the view that the acts of infringements alleged by the Petitioner in his petition, had not continued after 07<sup>th</sup> January 2014. Therefore, the said alleged acts cannot be identified as continuing infringements as alleged by the learned counsel for the petitioner.

There is yet another question to be considered. That is the question of applicability of provisions in section 13 (1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996. This is because the Petitioner has averred in his petition that he had lodged a complaint dated 21<sup>st</sup> January 2014, at the Human Rights Commission under the No. HRC/299/14. The Petitioner has produced, marked **P-6**, a receipt issued by the Human Rights Commission.

Section 13 (1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 is as follows.

*"where a complaint is made by an aggrieved party in terms of section 14, to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, **the period within which the inquiry into such complaint is pending** <sup>12</sup> before the Commission,*

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<sup>12</sup> Emphasis added.

*shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126 (2) of the Constitution."*

What section 13 (1) states is, not to take, the period within which the inquiry into a complaint is pending before the Commission, into account, for the purpose of computing the period of one month referred to in Article 126 (2) of the Constitution.

I only find a bare averment in the petition of a fact that he had lodged a complaint at the Human Rights Commission. The receipt issued by the Human Rights Commission produced marked **P-6**, only shows the fact that a complaint had been made.

In the case of H K Subasinghe Vs The Inspector General of Police and seven others,<sup>13</sup> the learned State Counsel raised a preliminary objection that the petitioner in that case had not made the complaint of the alleged infringements within the period of one month as provided in Article 126 (2) of the Constitution. Having considered the submissions, His Lordship S N Silva Chief Justice stated as follows.

*"The Petitioner seeks to bring the complaint within the time limit on the basis that he made the complaint to the Human Rights Commission of Sri Lanka within the stipulated time. In this regard the petitioner relies on section 31 (sic) <sup>14</sup> the Human Rights Commission of Sri Lanka Act No. 21 of 1996 which provides that where a complaint has been made within a period of one month to the Human Rights Commission, the period within which the inquiry into such complaint was pending before the Commission will not be taken into account in computing the period within which an application should be filled in this Court.*

*The petitioner has failed to adduce any evidence that there has been an inquiry pending before Human Rights Commission. In the circumstances, we have to uphold the preliminary objection raised by learned State Counsel."*

In the case of Ranaweera and others Vs Sub Inspector Wilson Siriwardena and others,<sup>15</sup> the second preliminary objection raised by the respondents in that application

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<sup>13</sup> SC (spl) No.16/1999, decided on 11-09-2000.

<sup>14</sup> Section 13 appears to have been inadvertently typed as section 31 in this judgment.

<sup>15</sup> 2008 (1) SLR 260.

is that the petitioners' application had been filed out of time. The petitioners in that application, relied on an averment in their petition that they had made a complaint to the Human Rights Commission within one month from the date of the acts resulting in the alleged violation of the petitioners' fundamental rights. Like in the instant case, the petitioners in that application, had produced a receipt issued by the Human Rights Commission acknowledging their complaint.

His Lordship Justice Gamini Ameratunga followed the decision in Subasinghe's case<sup>16</sup> and stated as follows.

*"It is very clear from the section quoted above that the mere act of making a complaint to the Human Rights Commission is not sufficient to suspend the running of time relating to the time limit of one month prescribed by Article 126(2) of the Constitution. In terms of the said section 13(1), the period of time to be excluded in computing the period of one month prescribed by Article 126(2) of the Constitution is "the period within which the inquiry into such complaint is pending before the Commission."*

*Section 14 of the Human Rights Commission Act (in so far as it is relevant to the present purpose) reads as follows. "The Commission may ..... on a complaint made to it by an aggrieved person investigate an allegation of an infringement or imminent infringement of a fundamental right of any person ....."*

*Thus the Human Rights Commission is not legally obliged to hold an investigation into every complaint received by it regarding the alleged violation of a fundamental right. Therefore a party seeking to utilize section 13(1) of the Human Rights Commission Act to contend that "the period within which the inquiry into such complaint is pending before the Commission shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court" is obliged to place material before this Court to show that an inquiry into his complaint is pending before the Human Rights Commission.*

*This is the view taken by this Court in the case of Subasinghe v the Inspector General of Police.<sup>17</sup> In that case the petitioner sought to invoke section 13(1) of the Human*

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<sup>16</sup> Supra.

<sup>17</sup> Supra.

*Rights Commission Act to claim exemption from the time limit set out in Article 126 of the Constitution. In that case My Lord the Chief Justice has held that the petitioner has to adduce some evidence to show that there has been an inquiry pending before the Human Rights Commission into his complaint. In the absence of any such material placed before Court by the petitioner, the objection relating to the time bar was upheld."*

The Petitioner in his written submissions has relied on the case of Romesh Cooray Vs Jayalath, Sub-Inspector of Police and others.<sup>18</sup> The 6<sup>th</sup> respondent in that case, had contended that the alleged infringement of the fundamental rights by the 1<sup>st</sup> to 6<sup>th</sup> respondents in that case had taken place on 06.07.2003, whereas the application of the petitioner in that case had been filed only on 11.12.2003. it was on that basis that the said 6<sup>th</sup> Respondent had contended that the said application had not been made within one month from the alleged infringement, as required by Article 126 (2) of the Constitution.

Her Ladyship Justice Shirani Bandaranayake<sup>19</sup> rejected the contention of the said 6<sup>th</sup> Respondent, for two main reasons. The first reason is that the 6<sup>th</sup> respondent had not raised the said preliminary objection either in his objections or in the written submissions. It appears that the said 6<sup>th</sup> respondent had taken the said objection belatedly and after all the Court pleadings were completed. It was in that background that Her Ladyship stated the following.

*"Accordingly on a consideration of the aforementioned Rules, it is evident that a preliminary objection should be raised at the time the objections are filed and/or should be referred to in the written submissions that has to be tendered in terms of the Rules. The objective of this procedure is quite easy to comprehend. The whole purpose of objections and written submissions is to place their case by both parties before Court prior to the hearing and when the petitioner's objections are taken along with the objections and/or written submissions filed by the respondents prior to the hearing, it would not come as a surprise either to the affected parties or to Court and the applications could be heard without prejudice to any one's rights. Therefore, as*

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<sup>18</sup> 2008 (2) SLR 43.

<sup>19</sup> As she then was.

*correctly pointed out by the learned President's Counsel for the petitioner, the earliest opportunity the 6<sup>th</sup> respondent had of raising the aforementioned preliminary objection was at the time of filing his objections and written submissions in terms of the Supreme Court Rules, 1990; as the objections and/or the written submissions should have contained any statement of fact and/or issue of law that the 6<sup>th</sup> respondent intended to raise at the hearing."*

The second reason for rejecting the said 6<sup>th</sup> Respondent's argument regarding the time bar is because the petitioner in that case had adduced material to satisfy Court that the inquiry before the Human Rights Commission had been still pending. This is clear from the following excerpt from Her Ladyship's judgment.

*".... Admittedly, the petitioner had complained to the Human Rights Commission about the said infringements on 08.07.2003. The petitioner in paragraph 47 of his petition dated 11.12.2003 clearly stated thus:*

*"The petitioner states that he has made a complaint to the Human Rights Commission on 08<sup>th</sup> July 2003 against the aforesaid unlawful conduct of the respondents and the inquiry in respect of the same is pending in the Human Rights Commission. The petitioner annexes hereto a copy of the letter issued by the Human Rights Commission marked P 11 in proof thereof. "*

*The document marked P 11 is issued by the Human Rights Commission of Sri Lanka, which refers to the complaint made on behalf of the petitioner on 08.07.2003. Accordingly, a complaint had been made to the Human Rights Commission within one month from the date of the alleged incident. ...."*

*"... Considering the aforementioned circumstances, it is clear that the petitioner had complied with the provisions laid down in Section 13(1) of the Human Rights Commission Act and had complained to the Human Rights Commission within one month of the alleged infringement of his fundamental rights. Further, when he had filed the present application before this Court on 11.12.2003, the inquiry before the Human Rights Commission had been still pending.*

*In the circumstances, it is quite clear that the petitioner had filed his application before this Court within the stipulated time frame in terms of Article 126(2) of the Constitution. ... "*

The Petitioner in the instant application has also placed reliance on the case of Amura Deshapriya Alles and another Vs Road Passenger Services Authority of the Western Province and others.<sup>20</sup> His Lordship Justice Marsoof PC had rejected the objection of time bar in that case for the reasons similar to those in Romesh Cooray's<sup>21</sup> case. Moreover, it is clear from the following passage from the judgment of His Lordship Justice Marsoof PC in that case, that the Human Rights Commission after conducting an inquiry into the complaint made by the relevant petitioner, had even proceeded to make a recommendation as well. The relevant passage is reproduced below.

*"... It is admitted that even when the Petitioners invoked the jurisdiction of this Court in terms of Article 126 of the Constitution on 8<sup>th</sup> June 2009, the said complaint was pending before the said Commission, which made its recommendations as provided in the Human Rights Commission of Sri Lanka Act No. 21 of 1996 on 30<sup>th</sup> November 2009 (X4) .....* "

In the instant case, the 1<sup>st</sup> Respondent in his affidavit, has specifically raised the preliminary objection against the maintainability of this application on the basis that the application of the Petitioner has been filed out of time provided by law. Thus, the Petitioner was put on notice that this preliminary objection would be raised at the argument of the case. However, the Petitioner has neither taken any further step nor adduced any further material to counter the said objection. It is thereafter, that the learned Senior State Counsel when this case was taken up for argument at the very commencement, raised the same objection as a preliminary issue.

The Petitioner in the instant case, has neither adduced any evidence to show that there has been an inquiry pending before the Human Rights Commission nor made any attempt to explain the long delay in filing this application.

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<sup>20</sup> SC (FR) Application No. 448/2009, Decided on 22-02-2013.

<sup>21</sup> Supra.

In the above circumstances, it is apparent that there is no merit in the submissions made by the learned counsel for the Petitioner.

Thus, for the foregoing reasons, I conclude that the Petitioner has failed to file the instant application within one-month time period specified in Article 126 (2) of the Constitution. Therefore, I uphold the preliminary objection raised by the learned Senior State Counsel and proceed to dismiss this application without costs.

**JUDGE OF THE SUPREME COURT**

**E A G R AMARASEKARA J**

I agree,

**JUDGE OF THE SUPREME COURT**

**A L S GOONERATNE J**

I agree,

**JUDGE OF THE SUPREME COURT**