

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

In the matter of an Application under and in terms of Articles 17 and 12 of the Constitution of Democratic Socialist Republic of Sri Lanka.

SC. FR. Case No. REF 219/15

1. Lanksakara Kulathunga Mudiyanse  
Ralahamillage Mohan Anuruddha  
Bandara Alawala  
No.117/A, Colombo Road,  
Wanduragala,  
Kurunegala.
2. Mohammed Shiffan Ibrahim  
No.282/01,  
Modara Road, Egoda Uyana,  
Moratuwa.
3. Janaka Sampath Kaluarachchi  
No.50C/2, Vije Mangalarama Road,  
Kohuwala.
4. Dewarahandi Leel Chanaka De Silva  
Palathottawatta Main Road,  
Palathittawatta,  
Palathotta.
5. Makawita Appuhamlaiye Chathura  
Kanishka Makawita  
No.128/91 near to the Medankara  
Vidyalaya,  
Horana.
6. Malgalla Liyanage Sajith Dilushan  
No.72/91, Aleswatta,  
Kirimatimulla,

Thelijiwila.

7. Diggaha Ranawaka Arachchige  
Chamila Maduranga Ranawaka  
Gothatuwa Watta, Baddegama.
8. Liyanage Nayana Dharshaka Molligoda  
No.130, Dholla Addarawatta,  
Manikgoda, Nawaththuduwa,  
Mathugama
9. Veemanage Harshana Gayan Perera  
No.4, Sisil Uyana,  
Etavila Road,  
Nagodawatta,  
Kaluthara South.
10. Koonthotagedara Ranjan Abeyawansha  
No.10/10, Dream View,  
Summerfield Land, Malpana,  
Kengalla,  
Kandy
11. Jayamaha Pathiranelage Chaminda  
Thushara Sampath Jayamaha  
Viharegama, Narammala.
12. Herath Mudiyansele Vindika  
Anuranga  
No.303-B, Puwakgahawatta,  
Meegoda.
13. Mawadavilage Dhanushka Jeevantha  
No.557-D5, Dangettiyawatta,  
Kuda Arakgoda,  
Alubomulla,  
Panadura.
14. Ranjan Sujeewa Munasinghe  
Rangama, Wellawa,  
Kurunegala.

15. Pinnagoda Liyana Arachchige Don  
Tiran Ravindu Tilakarathne  
Sihalena Koralaema,  
Gonapola Junction,  
Horana.
16. Demuni Indika Prasad  
No.15/3B, Degaladoruwa,  
Gunnapana.
17. Pilan Godakandage Milan Osanda  
No.15/1, Maitipe,  
3<sup>rd</sup> Lane,  
Galle.
18. Suduhakure Gedara Chinthaka  
Pradeep Dissanayake  
3<sup>rd</sup> Mile Post, Parappe,  
Rambukkana.
19. Vithanage Sumeera Suranjaya  
Vithanage  
No.311/01, 21<sup>st</sup> Lane,  
Dikkenpura,  
Horana.

**Petitioners**

**Vs.**

1. The Inspector General of Police  
Police Headquarters,  
Colombo 1.
2. The Commander Special Task Force  
Head Quarters  
No.223, Baudhaloka Mawatha,  
Colombo 7.

3. R.W.M.C. Ranawana  
Retired Deputy Inspector General of  
Police  
Commander of Special Task Force  
No.396/2/B, Hokandara South,  
Hokandara.
4. W.P.Wimalasena  
Senior Superintendent of Police,  
Office of Senior Superintendent of  
Police,  
Seethawaka,  
Avisawella.
5. Ms. W.P.G.D.J. Senanayake  
Assistant Secretary  
Ministry of Defence,  
Colombo 3.
6. D.D.K. Hettiarachchi  
Assistant Superintendent of Police  
Special Task Force Head Quarters,  
Gonahena,  
Kadawatta.
7. M.L.R. Chandrasiri  
Chief Inspector of Police,  
Officer in Charge,  
Special Task Force Head Quarters,  
Gonahena,  
Kadawatta.
8. B.S.H. Pieris  
Inspector of Police  
STF Head Quarters,  
No.223, Baudhaloka Mawatha,  
Colombo 7.
9. T.A.R Nimantha  
Inspector of Police  
STF Camp, Horana

10. S.P. Chaminda  
Inspector of Police,  
STF Camp,  
Horana.
11. The Secretary  
Ministry of Public Peace and Law and  
Order  
Floor 13,  
Sethsiripaya (Stage II),  
Battaramulla.
12. The Honourable Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondents**

**BEFORE:** Chandra Ekanayake J  
Buwaneka Aluwihare P.C.J  
Upali Abeyrathne J

**COUNSEL:** E. Thambaiah with S. Srikandarajah for the Petitioners

Viveka Siriwardena Deputy Solicitor General for the 1<sup>st</sup> and the  
12<sup>th</sup> Respondents

**ARGUED ON:** 9<sup>TH</sup> September 2015

**WRITTEN SUBMISSIONS:** 22- September-2015

**DECIDED ON:** 15-02-2016

**Buwaneka Aluwihare P.C.J**

This is an application under Article 126 of the Constitution complaining of the violation of Article 12 (1) of the Constitution by reason of the Petitioners not being promoted to the rank of 'Inspector of Police' of the Special Task Force.

More specifically, the Petitioners are challenging the promotions granted to forty-seven officers of the Special Task Force from the rank of 'Sub-Inspector of Police' to 'Inspector of Police' based on 'seniority and merit', by the letter dated 15<sup>th</sup> March 2013 with effect from 7<sup>th</sup> November 2012.

The Petitioners claim that two interviews had been held in order to choose competent candidates for the above post.

1. First Interview- 6<sup>th</sup> and 7<sup>th</sup> of November 2012
2. Second Interview- 15<sup>th</sup> February 2013

The second interview was held for the candidates who were unable to attend for the first interview. But some candidates who attend the first interview were also interviewed for the second time on 15<sup>th</sup> February 2013. Thereafter forty seven candidates, including the candidates who were given a second opportunity to appear before the interview panel and by the letter dated 15<sup>th</sup> March 2013, had been granted promotions.

The Petitioners moreover complained that the marks were not allocated to the candidates in accordance with the marking scheme which was made public before the interviews.

Thus the Petitioners have alleged that the interview board had acted in contrary to the marking scheme and had unfairly and unduly favoured some candidates who had not fulfilled the required qualifications by 20<sup>th</sup> October 2013, which was the closing date of the applications for the aforesaid promotion.

Being aggrieved by the manner in which promotions were granted, the Petitioners lodged a complaint to the Human Rights Commission on 10<sup>th</sup> April 2013 alleging that the fundamental rights guaranteed under Article 12 (1) of the Constitution had been violated. The Human Rights Commission having inquired into this matter by its report dated 13<sup>th</sup> November 2014 held that the Petitioners' fundamental rights guaranteed under Article 12 (1) of the Constitution had been infringed. Accordingly, three recommendations were

made, to be implemented by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the instant case, before 24<sup>th</sup> December 2014 in order to redress such grievances of the Petitioners.

Since these recommendations had not been implemented the Petitioners had come before this Court by way of a Fundamental Rights application.

When this application, was taken up for Support for Leave to proceed, on 9<sup>th</sup> September 2015, a preliminary objection with regard to the maintainability of this application was raised by the learned Deputy Solicitor General who appeared for the 1<sup>st</sup> and 12<sup>th</sup> Respondents. The objection so raised was on the basis that the application cannot be maintained by the Petitioners as the application is time barred.

The Court, having decided to treat the objection raised as a preliminary issue heard the submissions of the learned Deputy Solicitor General as well as the learned Counsel for the Petitioners. Thereafter the parties were granted permission to file written submissions on the preliminary issue.

For the purpose of dealing with the preliminary objection referred to above, it is important to determine the date on which the Petitioners first had knowledge of the alleged infringement.

Article 126 (2) of the Constitution stipulates that,

“Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf, within one month thereof, in accordance with such rules of the Court as may be in force, apply to the Supreme Court by way of a petition in writing addressed to such Court...”  
(emphasis added)

Thus, it is evident that the Petitioners should have invoked the jurisdiction of this court within one month from the letter dated 15<sup>th</sup> March 2013, by which

the appointment of forty seven officers to the post of ‘Inspector of Police’ was communicated.

An exception to this rule, however, is found in the Human Rights Commission of Sri Lanka, Act No.21 of 1996. This Act empowers the Human Rights Commission of Sri Lanka to entertain complaints in respect of violations of fundamental rights guaranteed by the Constitution.

Section 13 (1) of the Act reads 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 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 by such person in terms of Article 126(2) of the Constitution.” (emphasis added)

In the light of this section it is evident that the Petitioners could avoid the time bar, if the application to the Human Rights Commission (hereinafter referred to as the Commission) was made within one month of the alleged infringement. By virtue of the aforesaid provision time would not run during the pendency of proceedings before the Commission. This view was fortified in the case of *Romesh Cooray vs. Jayalath, Sub-Inspector Of Police And Others, (2008) 2 SLR 43.*

Accordingly, the Petitioners have lodged a complaint to the Human Rights Commission, on 10<sup>th</sup> April 2013 (‘P23’), which is well within one month of the impugned infringement of Article 12 (1).

Upon inquiry of the complaint so made by the Petitioners, the Human Rights Commission held that the fundamental rights guaranteed under Article 12 (1) of the Constitution had been infringed. Consequently, the Commission directed 1<sup>st</sup> and 11<sup>th</sup> Respondents to the instant application to implement three

recommendations before 24-12-2014, by its findings dated 13-11-2014. ('P24').

The Respondents, however, failed to implement those recommendations of the Human Rights Commission. Hence the Petitioners duly drew the attention of the Human Rights Commission by the letter dated 29-12-2014 with regard to the non-implementation. The Commission thereafter by letter dated 21-01-2015 granted further time till 12-02-2015 for the 1<sup>st</sup> and 11<sup>th</sup> Respondents to implement the recommendations.

As the recommendations were not implemented even within the extended time period, the Human Rights Commission summoned both the Petitioners and the Respondents to the Commission on 24<sup>th</sup> March 2015 for an inquiry regarding the non-implementation of the recommendations. At the inquiry an officer representing the Respondents requested for a further period of one month to consider granting redress to the Petitioners in accordance with the recommendations of the Commission.

Considering the sequence of events aforesaid, it is evident that the Petitioners were put on notice that the Respondents required a month's time from 24<sup>th</sup> March 2015 to implement the recommendations of the Human Rights Commission.

By a communication dated 17-04-2015 addressed to the Commission (marked and produced with the written submissions of the Petitioners as 'P41') the Respondents clearly stated that they are unable to implement the recommendations of the Human Rights Commission. Though technically the inquiry before the Human Rights Commission ended when the Commission pronounced its finding 13- 11 -2014, it would be reasonable to assume that the Petitioners had the expectation that the recommendations would be implemented. Hence, not invoking the jurisdiction of the Supreme Court within one month thereof could be justified to an extent. However the Petitioners were put on notice that the 1<sup>st</sup> and 11<sup>th</sup> Respondents were given a final date which was the 23<sup>rd</sup> April 2015 to implement the recommendations

and by their letter dated 14<sup>th</sup> April 2015 Respondents informed the Commission their inability to implement the same. Hence the Petitioners ought to have invoked the jurisdiction of this court in terms of Article 126(1) of the Constitution within one month of 23<sup>rd</sup> April 2015.

The Petitioners however, invoked the jurisdiction of this court on 5<sup>th</sup> June 2015 which is after a lapse of forty-two days, from the last date of the extended period of one month granted to the Respondents to implement the recommendations of the Human Rights Commission. i.e.

Last date of the extended period: 23 <sup>rd</sup> April 2015	}	42 Days
Application filed on : 5 <sup>th</sup> June 2015		

Thus the Petitioners' application to this court is time-barred in terms of Article 126 (2) of the Constitution. The Petitioners were well aware that the Respondents at the inquiry held on 24<sup>th</sup> March 2015, had given an assurance that relief would be granted in accordance with the recommendations of the Human Rights Commission within one month from that day. Therefore, at the instance the Respondents failed to adhere to the assurance they had given, the Petitioners ought to have come before this court within one month from 23<sup>rd</sup> April 2015.

Even though the time limit of one month is mandatory in ordinary circumstances, in exceptional circumstances, the Court has discretion to entertain a fundamental rights application made out of time where the delay in invoking the jurisdiction of the Court under Article 126 is not due to a lapse on the part of the Petitioner.

At this point I wish to refer to the following decisions of this court with regard to Article 126 (2) of the Constitution.

In Gamaethige vs. Siriwardene (1988) 1 SLR 385, Fernando J. observed that;

*“Three principles are discernible in regard to the operation of the time limits prescribed by Article 126 (2). Time begins to run when the*

*infringement takes place; if knowledge on the part of the Petitioner is required, time begins to run only when both infringement and knowledge exists. The pursuit of other remedies judicial or administrative does not prevent or interrupt the operation of the time limit. While the time limit is mandatory, in exceptional cases on the application of the principle 'lex non cogit ad impossibilia', if there is no lapse, fault or delay on the part of the Petitioner, this court has a discretion to entertain an application made out of time"*

Then in Edirisuriya vs. Navaratnam (1985) 1 SLR 100, the court held that the time limit of one month is mandatory, but that in a fit case the court would entertain an application made outside the time limit of one month provided an adequate excuse for the delay could be adduced.

The Petitioners before this court, in their written submissions dated 22-09-2015 have merely stated that they reliably understood that the Respondents have refused to implement the recommendation of the Commission only on 25-05-2015 which they have failed to substantiate.

Therefore, this court does not find any explanation by the Petitioners as to the reasons for the delay in filing this application. On the other hand, it is apparent that the Petitioners were well aware about the extension of the period of one month (till 23-04-2015) that was granted to the Respondents to implement the recommendations. I have considered the cases cited by the Petitioners, the case of Sriyani Silva (wife of Jagath Kumara) Vs. Iddamaligoda OIC Payagala 2003 1 SLR page 14 and Jayasinghe and Others Vs. R.S. Jayarathne and others 1999 2 SLR page 385 and is of the view that the rationale of those two decisions would not be applicable to the instant case in view of the facts and circumstances peculiar to this case.

Thus, I am of the view that one month period starts to run with effect from 23-04-2015. Therefore, without offering a reasonable explanation as to the inordinate delay amounting to an approximate period of forty- two days, the Petitioners cannot invoke the fundamental rights jurisdiction of this court.

Accordingly, I am of the opinion that the preliminary objection raised on behalf of the 1<sup>st</sup> and 12<sup>th</sup> Respondents should be upheld as *‘equity aids the vigilant, not those who slumber on their rights’*.

Considering the foregoing, I am of the view that, it has been established beyond doubt that the Petitioners have filed this application outside the time period of one month stipulated in Article 126 (2) of the Constitution. Thus, I uphold the preliminary objection raised on behalf of the 1<sup>st</sup> and 12<sup>th</sup> Respondents.

The application is dismissed in limine. I make no order as to costs.

JUDGE OF THE SUPREME COURT

CHANDRA EKANAYAKE J.

JUDGE OF THE SUPREME COURT

UPALI ABEYRATHNE J.

JUDGE OF THE SUPREME COURT

