

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

In the matter of an application under and in  
terms of Article 126 of the Constitution.

SC FR 304/2016

1. Tissa Kumara Liyanage  
Accountant CL. 1 Special  
No. 50 Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
2. Singappulige Nihal Fernando  
Accountant CL.1  
4<sup>th</sup> Floor, No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
3. Pushpa Kumara Kulatunga  
Accountant CL.1  
No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
4. Manikku Badathuruge Chandrika Rohini  
Nandasiri  
Accountant CL.1  
4<sup>th</sup> Floor, No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
5. Lattuwa Handi Kamal Sriyani De Silva  
Accountant CL.1  
AFM(DD2) Branch, 1<sup>st</sup> Floor  
Ceylon Electricity Board Head Office,  
No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
6. Balage Chandrajith De Silva  
Accountant CL.1  
No. 50, Ceylon Electricity Board,  
2<sup>nd</sup> Floor,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
7. Ranasinghe Arachchige Bandula Jagath  
Ranasinghe,  
Accountant CL.1  
Ceylon Electricity Board Head Office,

6<sup>th</sup> Floor  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02

8. Hettiarachchige Anoma Indrani  
Geethika Hettiarachchi  
Accountant CL.11 GR 1.  
7<sup>th</sup> Floor , P.O.Box 540,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
9. Jayasundera Mudiyansele Dayananda  
Wijeweera,  
Accountant CL.11 GR 1.  
No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
10. Wasalamuni Arachchillage Krishan  
Dhammika Premathilake  
Accountant CL.11 GR 1  
Ceylon Electricity Board Head Office,  
6<sup>th</sup> Floor, Colombo 02
11. Himali Dhammika Kumudumali Hewage  
Accountant CL.11 GR. 1  
No. 22, Udumulla Passage ,  
Pagoda Road, Nugegoda.
12. Thushari Renuka Thrimavithana  
Accountant CL11 GR 1,  
No. 644, Sri Jayewardeneपुरa Mawatha,  
Ethulkotte 10100.
13. Withana Appuhamilage Anura Samantha  
Accountant CL.11 GR.11  
Accountant Cash Office  
1<sup>st</sup> Floor, Ceylon Electricity Board,  
Colombo 02.
14. Dholakarage Wilbert Fernando  
Accountant CL.11 GR11  
Ceylon Electricity Board,  
Officer of the AFM (DD1),  
6<sup>th</sup> Floor, P.O.Box 540  
Colombo 02.
15. Haupe Liyanage Anura Kithmi  
Kandanaarachchi  
Accountant CL.11 GR.11

Finance Division  
Ceylon Electricity Board Head Office,  
6<sup>th</sup> Floor, Colombo 02.

16. Aguragaha Kanaththege Geethani  
Champika,  
Accountant CL.11 GR 11.  
4<sup>th</sup> Floor, No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
17. Weerathna Mahavidana Muhamdiramge  
Ladisha,  
Accountant CL.11 GR 11.  
No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02
18. Prabha Chandramukee Munasinghe  
Accountant CL.11 GR 11.  
No.79-1-A, Land Mark Building,  
Colombo 03.
19. Awanthi Nirosha Herath  
Accountant CL.11 GR 11  
2<sup>nd</sup> Floor, No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
20. Inoka Sudarshani Wickremasinghe  
Jayasekera  
Accountant CL.11 GR 11  
No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Electricity Board, Colombo 02.
21. Ruvini Kiriwendula  
Accountant CL.11 GR 11  
Ceylon Electricity Board, 2<sup>nd</sup> Floor,  
No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
22. Kandana Arachchige Dona Subhani  
Kaushalya,  
Accountant CL.11 GR 11  
Ceylon Electricity Board  
No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.

23. Merenchige Dona Prabodhini Shanika Kumari  
Accountant CL.11 GR 11  
No. 50, Ceylon Electricity Board  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
24. Dissanayake Mudiyanseelage Sumitra Nandana Kumara Bandara  
Accountant CL.11 GR 11  
No. 50, Ceylon Electricity Board,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
25. Hasitha Ranahansi Priyanwada Pathberiya  
Accountant CL.11 GR 11  
No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
26. Gayan Eranga Hatharasinghe  
Accountant CL.11 GR 11  
No. 340, R.A. de Mel Mawatha,  
Colombo 03.
27. Makulpagoda Gedera Geetha Kumari Jayawardena,  
Accountant CL.11 GR 11  
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28. Alubomulla Liyanage Dinusha Lakmali  
Accountant CL.11 GR 11  
AFM (DD2) Branch 1<sup>st</sup> Floor,  
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No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02
29. Alankarayalage Nayomi Sandamali Bandara  
Accountant CL.11 GR 11  
No. 98, Fife Road  
Colombo 05.

30. Kumarasinghe Arachchige Niluka  
Kumarasinghe  
Accountant CL.11 GR 11  
No. 385, 6<sup>th</sup> Floor,  
Land Mark Building  
Colombo 03.
31. Dimuthu Damayanthi Don Attygala  
Accountant CL.11 GR 11  
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P.O. Box 540  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02
32. Neelani Hallinna Guruge  
Accountant CL11 GR.11  
No. 263/2, 1/1, Galle Road,  
Colombo 03.
33. Deshabanduge Lakshman  
Accountant CL.11 GR 11  
4<sup>th</sup> Floor, No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02
34. Herath Mudiyansele Amarasinghe  
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P.F. Branch Ceylon Electricity Board  
Colombo 02
35. Ratnasingam Baraneetharan  
Accountant CL.11 GR 11  
Ceylon Electricity Board 2<sup>nd</sup> Floor  
No. 50,  
Sir Chittampalam A. Gardiner  
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36. Ramanayake Hewa Belpage Malithie  
Malanie.  
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AFM(DD2) Branch, 1<sup>st</sup> Floor  
Ceylon Electricity Board Office,  
No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.

37. Thiyambarawaththa Kattadiralage Gayani  
Thiyambarawaththa  
Accountant CL.11 GR 11  
No. 50,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.
38. Dharshaka Ranga Jayasinghe  
Accountant CL.11 GR 11  
Ceylon Electricity Board  
Meethotamulla Road,  
Kolonnawa.
39. Hannagige Iroshini Sandamali Soysa  
Accountant CL.11 GR 11  
No. 340, R.A. de Me. Mawatha,  
Colombo 03.
40. Ratnayake Mudiyanseelage Vindya Nilushi  
Ratnayake,  
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Ceylon Electricity Board  
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41. Imihamy Mudiyanseelage Sujeewa Achala  
Kumari,  
Accountant CL.11 GR 11  
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Sir Chittampalam A. Gardiner  
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42. Hettiarachchige Anura  
Accountant CL.11 GR 11  
AFM(DD2) Branch 1<sup>st</sup> Floor,  
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Sir Chittampalam A. Gardiner  
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43. Fathima Asmath Alavi  
Accountant CL.11 GR 11  
No. 385, 6<sup>th</sup> Floor,  
Land Mark Building, Colombo 03.
44. Roitha Weerasinghe  
Accountant CL.11 GR 11  
No. 17, Bullers Lane , Colombo 07.

45. Walagama Polpalardeniya Gedera  
Chandima Sagarika Jayalath  
Accountant CL.11 GR 11  
No. 644, Sri Jayawardenapura Mawatha,  
Ethulkotte, 10100
46. Dinusha Lakmali Mayadenne  
Accountant CL.11 GR 11  
No. 280 Kandy Road,  
Kiribathgoda.
47. Himihami Mudiyansele Kanchana  
Bandara Wanninayake  
Accountant CL.11 GR 11  
No. 280 Kandy Road,  
Kiribathgoda.
48. Warsha Hannadige Susantha Kumara  
Accountant CL.11 GR 11  
No. 127, Matara Road, Galle.
49. Nawaratne Mudiyansele Sandya  
Kumari Nawaratne,  
Accountant CL.11 GR 11  
Generation HQ, New Kelani Bridge Road,  
Kolonnawa.
50. Malalwa Arachchige Don Samoshi  
Vimarshane  
Accountant CL.11 GR 11  
No. 644, Sri Jayawardenapura Mawatha,  
Ethulkotte,
51. Handu Gamage Ajith Priyantha  
Accountant CL.11 GR 11  
No. 09. New Town , Ratnapura
52. Bothalegama Samantha Kumara.  
Accountant CL.11 GR 11  
No. 09. New Town , Ratnapura
53. Kithulgodage Krishani Champika  
Karunasena,  
Accountant CL.11 GR 11  
No. 644, Sri Jayawardenapura Mawatha,  
Ethulkotte,
54. Matarage Indika Udayani  
Accountant CL.11 GR 11  
No. 644, Ethulkotte, Sri Jayawardenapura.

55. Welivitage Samudya Shashiprabha  
Welivitage,  
Accountant CL.11 GR 11  
Generation HQ, New Kelani Bridge Road,  
Kolonnawa.
56. Tennakoon Mudiyansele Dayananda  
Accountant CL.11 GR 11  
Ceylon Electricity Board, No. 04,  
Springvalley Road, Hndagoda, Badulla.
57. Handapangoda Mudelige Viraga Nilukshi  
Handapangoda  
Accountant CL.11 GR 11  
No. 01, Fairline Road, Dehiwala.
58. Prasadi Malmi Thranga Wijayasinghe  
Accountant CL.11 GR 11  
No. 608, Galle Road, Ratmalana.
59. Katukurunde Kaluarachchi Kalani Kokila  
Kumari Kaluarachchi  
Accountant CL.11 GR 11  
No. 01, Fairline Road, Dehiwala.
60. Kariyawasam Patuwatha Vithanage Kasun  
Chathuranga Arunadeepa,  
Accountant CL.11 GR 11  
No. 167, Matara Road, Galle.
61. Gnanaka Rohan Edirimanne  
Accountant CL.11 GR 11  
No. 608, Galle Road, Ratmalana.
62. Jayani Chathurika Handagama,  
Accountant CL.11 GR 11  
No. 644, Sri Jayawardenapura Mawatha,  
Ethulkotte,
63. Bernard Gregory Bartholameusz  
Accountant CL.11 GR 11  
No 04, Spring Valley Road,  
Hindagoda, Badulla.
64. Herath Mudiyansele Anura Kumarasiri  
Ethulgama  
Accountant CL.11 GR 11  
No. 6/1, T.B. Panadokke Mawatha  
Gampola 205200.



65. Jainul Abdeen Hamsia  
Accountant CL.11 GR 11  
Ceylon Electricity Board, Kandy.
66. Selvaskanthanathan Umakanthan,  
Accountant CL.11 GR 11  
Old Park Road, Chundikuli, Jaffna.
67. Don Shanil Hirunika Balasuriya,  
Accountant CL.11 GR 11  
Maithripala Senanayake Mawatha,  
Anuradhapura New Town  
Anuradhapura.
68. Gorakawela Jayasinghe Nalika  
Accountant CL.11 GR 11  
DGM (NWP)Office  
Ceylon Electricity Board,  
Assedduma, Kuliyaipitiya.
69. Subasinghe Mudiyanseelage Janaka  
Subasinghe,  
Accountant CL.11 GR 11  
DGM (NWP)Office  
Ceylon Electricity Board,  
Assedduma, Kuliyaipitiya.
70. Mulla Vithanage Don Salila Priyanka  
Accountant CL.11 GR 11  
Maithripala Senanayake Mawatha,  
Anuradhapura.
71. Rajikalaa Inpamohan  
Accountant CL.11 GR 11  
Office of the DGM (East)  
Ceylon Electricity Board  
Uppuweli, Trincomalee
72. Sivalingam Mohawannan  
Accountant CL.11 GR 11  
Office of the DGM (EOSL)  
Ceylon Electricity Board  
Uppuweli, Trincomalee.
73. Wasantha Thilakasiri Assalaarachchi  
Accountant CL.11 GR 11  
No. 240, Ceylon Electricity Board  
Trincomalee Coal Power Project  
High Level Road, Colombo 06.

74. Weerathunga Arachchilage Deepal  
Lankeshwara  
Accountant CL.11 GR 11  
DGM (IT) Branch  
Ceylon Electricity Board Head office  
Colombo 02.
75. Maligaspe Koralalage Dhanasekera  
Gunawardhana,  
Accountant CL.11 GR 11  
Ceylon Electricity Board  
New Kanchana Building, Getahetta.
76. Mudugamuwa Hewage Priyanka Noroshani  
Jayasinghe,  
Accountant CL.11 GR 11  
Ceylon Electricity Board  
P.O. Box 540, Colombo 02.
77. Liyana Pathirennegelage Peter Kithsiri  
Bandara,  
Accountant CL.11 GR 11  
Accountant Revenue Branch, W.P.S. 11  
Ceylon Electricity Board  
No. 644, Sri Jayawardenapura Road,  
Ethulkotte,
78. Delpitiya Mudiyansele Suranjith Athula  
Delpitiya,  
Accountant CL.11 GR 11  
Ceylon Electricity Board Head office  
Kandy.

**Petitioners( SCFR 304/2016)**

**Vs.**

1. Hon. Ranjith Siyambalapitiya  
Minister of Power and Renewable Energy  
Ministry of Power and Renewable Energy  
No. 72, Ananda Coomaraswamy Mawatha,  
Colombo 07.
- 1(a) Hon. Ravi Karunanayake  
Minister of Power and Renewable Energy  
And Business Development

Ministry of Power and Renewable Energy  
And Business Development  
No. 72, Ananda Coomaraswamy Mawatha,  
Colombo 07.

- 1(b) Hon. Mahinda Amaraweera,  
Minister of Power and Energy,  
Ministry of Power and Energy,  
No. 72, Ananda Coomaraswamy Mawatha,  
Colombo 07.
2. Dr. B.M.S. Batagoda,  
Secretary  
Ministry of Power and Renewable Energy  
No. 72, Ananda Coomaraswamy Mawatha,  
Colombo 07.
- 2(a) Mrs. Wasantha Perera,  
Secretary  
Ministry of Power and Energy  
No. 72, Ananda Coomaraswamy Mawatha,  
Colombo 07.
3. Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
4. Mr. W.D.A.S. Wijayapala,  
Chairman,  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- 4(a) Mr. W.P. Ganepola,  
Chairman,  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- 4(b) Mr. Rakitha Jayawardena  
Chairman,  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.

- 4(c) Mr. Vijitha Herath,  
Chairman,  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
5. Mr. W.A. Gamini Wanasekera  
Vice Chairman,  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- 5(a) Mr. Rajive Severajah  
Vice Chairman,  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- 5(b) Mr. Y.G.I. Saman Kumara,  
Vice Chairman,  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
6. Mr. W.R.G.Sanath Bandara,  
Working Director  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- 6(a) Mr. K.K. Tissa Jinadasa,  
Working Director  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
7. Mr. T.M.K.B. Tennakoon  
Member  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.

- 7(a) Mr. Ranjith Asoka,  
Member of the Board,  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- 7(b) Mr. M.M. Nayeemudeen,  
Member of the Board,  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,
8. Mr. S.D.A.B. Boralessa,  
Member  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- 8(a) Mr. S.K. Kannangara  
Member of the Board  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- 8(b) Mr. B.K. Jagath Perera  
Member of the Board  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
9. Mr. R. Semasinghe ,  
Member of the Board,  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- (9(a) Mr, Jude Nilukshan  
Member of the Board,  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.

10. Ms. Jeewani Kariyawasam,  
Member  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- 10(a) Mr. Ruban Wickremarachchi,  
Member,  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
11. Mr. M.C. Wickremasekera  
General Manager  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- 11(a) Mr. A.K. Samarasinghe  
General Manager  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- 11(b) Mr. S.D.W. Gunawardena,  
General Manager  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
- 11(c) Mr. D.D.K. Karunaratne,  
General Manager,  
Ceylon Electricity Board  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
12. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

13. Mr. T.A. Wanniarachchi,  
President,  
Ceylon Electricity Board Engineer's  
Union,  
Greater Colombo Transmission and  
Distribution,  
Loss Reduction Project,  
Ceylon Electricity Board  
17, Bullers Lane, Colombo 07.
- 13(a) Mr. S.W. Kumarawadu,  
President,  
Ceylon Electricity Board Engineer's  
Union,  
Greater Colombo Transmission and  
Distribution,  
Loss Reduction Project,  
Ceylon Electricity Board  
17, Bullers Lane, Colombo 07.
14. Mr.K.L.L. Wijeratne,  
Chairman,  
National Salaries & Cadre Commission  
BMICH  
Buddhaloka Mawatha, Colombo 07.
15. Mr. Asoka Jayasekera,  
Secretary,  
National Salaries & Cadre Commission  
BMICH  
Buddhaloka Mawatha, Colombo 07.

**Respondents**

**SC FR 204/2016**

1. Singappulige Nihal Fernando  
No. 65K Sri Silwansa Nahimi Mawatha  
Suriya Paluwa, Aldeniya  
Kadawatha.
2. Jayasundera Mudiyansele Dayananda  
Wijeweera  
No. 31/22, 1<sup>st</sup> Lane  
Temple Road,  
Maharagama

3. Tissa Kumara Liyanage  
No. 8, Isuru Uyana 11,  
Kalutara.

**Petitioners**

**Vs.**

1. Hon. Ranjith Siyambalapitiya  
Minister of Power and Renewable Energy  
Ministry of Power and Renewable Energy  
No. 72, Ananda Coomaraswamy Mawatha,  
Colombo 07.

And 14 others.

**Respondents(In SCFR 204/2016)**

**SC FR 205/2016**

1. Dinesh Vidanapathirana  
Attorney-at-Law  
No. 166 ½, Hulftsdorp Street  
Colombo 12.

**Petitioner**

**Vs.**

01. Hon. Ranjith Siyambalapitiya  
Minister of Power and Renewable Energy  
Ministry of Power and Renewable Energy  
No. 72, Ananda Coomaraswamy Mawatha,  
Colombo 07.

And 14 others.

**Respondents (SCFR 205/2016)**



Before : Jayantha Jayasuriya, PC, CJ  
L.T.B.Dehideniya, J  
S. Thurairaja, PC, J.

Counsel : Romesh de Silva , PC with Shanaka Cooray instructed by Dinesh Vidanapathirana for the Petitioners.  
Ms. Varunika Hettige, DSG for the 1<sup>st</sup> to 12<sup>th</sup> and 14<sup>th</sup> and 15<sup>th</sup> Respondents.  
Faiz Musthapa , PC with Ms. Thushani Machado instructed by H.C. de Silva for the 13<sup>th</sup> Respondent.

Argued on : 08<sup>th</sup> September, 2020

Decided on : 18.03.2021

**Jayantha Jayasuriya, PC, CJ**

SC FR Applications 304/2016, 204/2016 and 205/2016 were taken up together with the agreement of the parties as the impugned conduct in all these applications is the same. Counsel made submissions focusing on SC FR 304/2016 and all parties in all three connected matters agreed to abide by the Judgement delivered in SC FR 304/2016.

In SC FR 304/2016, seventy-eight Petitioners have invoked the jurisdiction of this Court under Article 126 of the Constitution. All of them are accountants by profession and are employees of the Ceylon Electricity Board (hereinafter also referred to as CEB). They are members of the ‘Ceylon Electricity Board Accountants’ Association’. The Petitioners had been holding different positions at senior executive category within the Accounts and Audit Service of the Ceylon Electricity Board, at the time they invoked the jurisdiction of this Court under Article 126 of the Constitution. They hold different positions with different classes, grades and salary scales. Such classes, grades and salary scales are, namely; Class I Special at K Special salary scale, Class I at

K1 salary scale, Class II Grade 1 at K2 salary scale, Class II Grade II at K3 salary scale and Class II Grade II at K4 salary scale.

The Petitioners contended that the criteria for the appointment and recruitment, and the promotion of employees of the CEB at Senior Executive Level are regulated by the General Manager's Circular No 2002/GM/32(1)/Policy titled "Schemes of Recruitment and Promotions For Senior Executive Categories". Petitioners contended that the aforesaid scheme was applicable to employees from key categories of employment including, the Engineering Service, Human Resources Service and Ancillary Services. They contend that all employees at Senior Executive Level at the CEB are placed at different salary scales depending on the class and the grade they are at within a single salary structure namely "K structure" irrespective of the specific service they belong to. In other words, under the scheme in place no distinction is made on the basis of the specific service they belong to when they are holding positions at the same class and grade within the stipulated salary scale.

The Petitioners further contended, that they entertained a legitimate expectation to be placed within a common salary structure irrespective of the Service they belong to. It is their contention, that the creation of a distinct salary scale named "E-salary scale" and a "Unified Engineering Service" applicable only to Engineers who are working at the Senior Executive Grades in the CEB is violative of their Right to equality guaranteed under Article 12(1) and Freedom of occupation guaranteed under Article 14(1)(g) of the Constitution.

The 13<sup>th</sup> Respondent in this matter is the President of the Ceylon Electricity Board Engineer's Union. The CEB is cited as the 3<sup>rd</sup> Respondent and the 4<sup>th</sup> Respondent is the Chairman of the CEB. Objections to the Petitioner's application were filed by way of affidavits of the 4<sup>th</sup> and 13<sup>th</sup> Respondents. They contended, that the Petitioners have failed to establish any violation of their rights and furthermore, the acts of none of the Respondents have violated the Fundamental Rights of any of the Petitioners. It is their contention, *inter alia*, that there was no common scheme of recruitment and promotion for employees from different services within the CEB. However, they contend that employees from different services were placed within a common salary scale called K-salary scale. They further contend that the creation of the Unified

Engineering Service and the E-salary scheme for the employees of the Unified Engineering Service is a reasonable classification based on intelligible differentia.

Furthermore, the Respondents by way of a preliminary objection contend, that the application of the Petitioners' should be dismissed *in limine* as it is time-barred. Further they claim that the Petitioners have failed to cite all necessary parties; they suppressed and / or misrepresented material facts and the application is futile in view of the supervening events.

Of these objections I propose to consider the objection of time-bar, first.

It is the contention of the Petitioners, *inter alia* that their rights were violated due to:

*'the continuous payment of salaries to the engineers employed by the 3<sup>rd</sup> Respondent, **under and in terms of the impugned Circular No 2014/GM/46/Pers purportedly dated 27/11/2014'*** (emphasis added).

According to the material placed before this Court, the Board of Directors of the 3<sup>rd</sup> Respondent at the meeting held on 26 November 2014 has approved the creation of the Unified Engineering Service with the E-Salary scale applicable to the said Service and thereafter on 27 November 2014, the General Manager of the 3<sup>rd</sup> Respondent was directed to issue necessary circular instructions to give effect to the aforesaid decision of the Board of Directors. However, it was only on 8<sup>th</sup> January 2015 the administration of the CEB informed its employees regarding the creation of the unified service for engineers and the E-Salary Scale, for the first time. Thereafter, the said circular had been first withdrawn and thereafter re-issued on the following day, namely on the 09<sup>th</sup> January 2015. Petitioners contend that the salaries of all engineers, senior engineering assistants and engineering assistants have been paid on the basis of the impugned circular, from the month of January 2015.

It is pertinent to note that, it is *after a period of nineteen months* from the date on which the Petitioners became aware of the impugned circular and the payment of salaries based on the said circular did take place, for the first time; the Petitioners filed papers in the present application. More particularly, it was on the *05<sup>th</sup> September 2016*, that the Petitioners filed papers before this

Court in the present application. Hence, the Respondents' contend that the petitioners' application is time-barred. The other two connected matters namely SC FR 204/2016 and SC FR 205/2016 were filed on 17<sup>th</sup> June 2016 – two and half months prior to the application under consideration.

The 13<sup>th</sup> Respondent at the first given opportunity pleaded in these proceedings that the application is time barred and moved Court that the application be dismissed *in limine*. Limited objections dated 14<sup>th</sup> September 2016, amended limited objections dated 20<sup>th</sup> September 2016 and the objections dated 24<sup>th</sup> November 2016 filed by the 13<sup>th</sup> Respondent do raise the issue of time-bar as a preliminary objection. Limited objections filed on 1<sup>st</sup> September 2016 in SC FR 204/2016 and SC FR 205/2016 also raise time-bar as a preliminary objection.

Article 126(2) of the Constitution provides that an application on an alleged infringement or an alleged imminent infringement of a fundamental right should be made to the Supreme Court within one month from the date of the administrative or executive action due to which such infringement is alleged to have taken place or alleged to be taking place. Jurisprudence of this Court establishes that the time limit of one month set out in Article 126(2) is mandatory and non-compliance with it would result in the dismissal of such application due to lack of jurisdiction to entertain such delayed applications. However, this Court had, further recognised that an extension of this mandatory one-month time period could be granted in certain circumstances. One such circumstance is the situations in which the principle *lex non cogit ad impossibilia* can be invoked due to the circumstances in a particular case. It is also pertinent to note that this Court had accepted that the calculation of one-month period should begin not from the date of the occurrence of the alleged infringement but from the day the petitioner becomes aware of the alleged infringement. Furthermore, this Court had also recognize that the time period of one month should be deemed to commence only after the Petitioners had a reasonable opportunity to complete the preparatory work which was essential to formulate and file their application, in applications which have been filed in public interest.

Justice Prasanna Jayawardane PC in **Demuni Sriyani De Soyza et al v Dharmasena Dissanayake et al**, SC FR 206/2008, SC minutes of 09<sup>th</sup> December 2018, with the other two

judges agreeing with him, cited with approval judgments of this Court<sup>1</sup> and recognized the aforementioned dicta applicable in relation to the issue of time-bar in the context of Article 126(2) of the Constitution.

It is common ground that the e-mails of 8<sup>th</sup> and 9<sup>th</sup> January 2015, conveyed the impugned decision reached on 27<sup>th</sup> November 2014. The application under consideration has been filed in this Court on 5<sup>th</sup> September 2016, well outside the one-month time period stipulated under Article 126(2) of the Constitution. It is on this basis that the Respondents claim that this application is time-barred. However, the Petitioners refute this contention. The Petitioners claim that there is a ‘continuing violation’ of the Petitioners’ rights in this matter and each instance in which salaries are paid to the members of the Unified Engineering Service, based on the impugned decision, a violation of the Rights of the Petitioners occurs. They have pleaded “*that all engineers of the CEB have been paid their monthly salaries from January 2015 up to August 2016 on the basis of the decisions contained in the impugned Circular No 2014/GM/46/Pers purportedly dated 27/11/2014 hereinbefore marked as P8a, whilst the Petitioners and those similarly circumstanced, have not been paid an equivalent amount as paid to the engineers employed in the same grade as the Petitioners, by the 3<sup>rd</sup> Respondent*”. The Petitioners contend, therefore, that the application is not time barred.

The Petitioners further contended that this Court in its decision in **Ceylon Electricity Board Accountant’s Association v Hon Patali Champika Ranawaka et al**, [SC FR 18/2015, SC minutes of 03.05.2016] already has held that there is a continuing violation of rights in this matter.

It is pertinent to note that **Ceylon Electricity Board Accountant’s Association**, SC FR 18/2015 (supra) is an application made by a trade union which invoked the jurisdiction of this Court on

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<sup>1</sup> Edirisuriya v Navaratnam [(1985) 1 SLR 100], Illangaratne v Kandy Municipal Council [1995 BALJ Vol. VI Part 1 p. 10], Mutuweeran v The State [5 Sri Skantha’s Law Reports 126], Ramanathan v Tennekoonn [1988 2 CALR 187], Siriwardane v Rodrigo [(1986) 1 SLR 384], Namasivayam v Gunawardane [(1989) 1 SLR 394], Saman v Leeladasa [(1989) 1 SLR 1], Ukwatta v Marasinghe [SC FR 252/2006, SC minutes of 15.12.2010], Gamethige v Siriwardene [(1988) 1 SLR 384], Goonatilake v Piyadigama [SC FR 219/2015, SC minutes of 30.01.2014], Alawala v The Inspector General of Police [SC FR 219/2015, SC minutes of 15.02.2016].

the basis of an alleged infringement of Rights of the members of the petitioner union due to the “decisions contained in Circular No 2014/GM/46/Pers, purportedly dated 27/11/2014” (the same decision impugned in the present application). The application in SC FR 18/2015 had been filed on 6<sup>th</sup> February 2015. The Respondents in the aforementioned application by way of a preliminary objection contended that the petitioner union has no *locus standi* and therefore moved that the application be dismissed *in limine*. The Court having considered submissions of all the parties held;

*“that in the absence of a specific provision permitting a Trade Union to institute action on behalf of its members, the Petitioner Union cannot have and maintain this application on behalf of its members in terms of Article 17 read with Article 126(2) of the Constitution”* ,

and dismissed the petitioner’s application.

However, it is pertinent to note that the Court having dismissed the application, further proceeded to observe;

*“This order does not however preclude a person who has in fact suffered an injury by reason of actual continuous violation of his fundamental rights, bringing an action against the Respondents for judicial remedy. The Court is mindful that it would be disastrous for the rule of law, if such person is prevented from bringing action, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it”*. (page 15 of the judgment).

The contention of the Petitioners, in the present application, that the violation complained in these proceedings is a ‘continuous violation’ is partly based on the last mentioned dicta of this Court, in the previous application.

It is pertinent to observe that the respondents in SC FR 18/2015 had urged four grounds in support of their preliminary objection. They are the '*locus standi*' of the petitioner, the unique status of the petitioner namely that it is neither a natural nor a juristic person, failure to name necessary parties and; the suppression and / misrepresentation of material facts. The Order of this court dated 03.05.2016 focuses solely on one of those grounds namely the '*locus standi*' of the petitioner trade union. There is no material available before this Court to conclude that any of the parties made submissions drawing the attention of the Court on the nature of the violation alleged by the petitioner trade union, in the course of their submissions on '*locus standi*'. The Order of this Court in the aforesaid application also does not reflect that the 'nature of the alleged violation' was an issue that was focused, in the course of submissions by the parties. Furthermore, the observation of this Court in the aforesaid Order, that

*“This order does not however preclude a person who has in fact suffered an injury by reason of actual continuous violation of his fundamental rights, bringing an action against the Respondents for judicial remedy”;*

neither reflects the nature of the material it took into consideration in making this observation nor the reasons for such observation.

I am mindful of the strong views expressed by this Court in the aforesaid Order, but unable to accept the contention that this Court had already determined that the violation alleged in these proceedings is a 'continuing violation'. Furthermore, I am of the view that the Petitioners contention that the aforesaid Order of this Court provides a basis for the Petitioners to invoke the jurisdiction of this Court on the premise of a 'continuing infringement' is devoid of merit.

*“The rulings of the Supreme Court is not scriptural sanction but is of ratio-wise luminosity within the edifice of facts where the judicial lamp burns the legal flame.”*

[**Ceylon Electricity Board Accountant’s Association**, SC FR 18/2015 (supra) at page 14].

However, it remains the duty of this Court to consider the nature of the violation alleged in the present application, independent of the failure or success of the contention that this Court in its previous Order had already decided that the alleged violation is a ‘continuous violation’.

This Court in **Demuni Sriyani De Soyza** (supra) in the context of the one-month time limitation stipulated in Article 126(2), observed;

*“There is another development in the interpretation and application of Article 126(2) which should be mentioned here. That is, the principle that, in appropriate circumstances, this Court may be inclined to consider whether it should extend the time limit of one month beyond the date on which an infringement of Fundamental Rights commenced, if that infringement is of a **continuing** nature”* (at page 13).

Justice Prasanna Jayawardena PC, in **Demuni Sriyani De Soyza** (supra), having considered a series of judgments of this Court<sup>2</sup>, in deciding whether a particular violation is ‘continuing’ in nature recognised the difference between a ‘*continuing infringement*’ and the ‘*continuing effect of a decision/s taken on a particular day which immediately affect a person or decide his alleged rights*’. It is his Lordship’s view that the acts or conduct falling in to the latter category mentioned hereinbefore would not constitute a ‘continuing violation’ of rights. His Lordship Justice Jayawardena with the other two judges agreeing with him held;

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<sup>2</sup> *Sanasiritissa Thero v De Silva* [1989 (2) SLR 356], *Jayasinghe v The Attorney-General* [1994 (2) SLR 74], *Wijesekera v The Attorney-General* [2007 (1) SLR 38], *De Silva v Mathew* [ SC FR 64/2009, SC minutes of 27.03.2014], *Wijesekera v Lokuge* [SC FR 342/2009, SC minutes of 10.06.2011], *Lake House Employees Union v Associated News Papers of Ceylon LTD* [SC FR 637/2009, SC minutes of 17.12.2014], *Gunaratne v Sri Lanka Telecom* [1993 (1) SLR 109], *Dayaratne v National Savings Bank*[2002 (3) SLR 116]



*“An infringement can be constituted by a single, distinct and ‘one-off’ act, decision, refusal or omission. However, some other infringements can be constituted by a series of acts, decisions, refusals or omissions which continue over a period of time. It is only the second type of infringement which can be correctly identified as a ‘continuing infringement’.*

*It seems to me that, the essential characteristic of a ‘continuing infringement’ which is constituted by an **act or decision** is that, such act or decision or similar acts or decisions are taken several times throughout the period the infringement continues. There is a series of acts or decisions, each of which infringe the Petitioner’s Fundamental Rights, which occur through out the period of the infringement. The result is a ‘continuing infringement’ in relation to which the time period of one month starts on the day last such act is done or decision is taken. It should be understood that, the type of decision contemplated here is, usually a decision taken for the first time on a particular set of facts and not a decision affirming a previous decision” (at page 17).*

Furthermore, this Court made a distinction between the cases where an infringement is a ‘refusal or omission’ to perform an act which should be done. The Court was of the view;

*“where the infringement consists of the refusal or omission to perform an act **that should be done**, the infringement will be a continuing one as long as the refusal remains in force or the omission persists and the time period of one month specified in Article 126(2) will start on the day on which the such refusal is made and becomes known to the Petitioner or omission to perform the act becomes known to the Petitioner” (emphasis added) [Demuni Sriyani De Soyza (supra) page 17-18].*

When the aforementioned dicta of this Court is taken in the context of the facts of this application under consideration, it is important to note that the Petitioners contention as reflected in paragraphs 63, 65, 66 and 67 and prayers (b) and (c) of the Petition, that their Fundamental Rights are violated is mainly based on the fact that *“the continuous payment of salaries to the*

*engineers employed by the 3<sup>rd</sup> Respondent, under and in terms of the impugned circular No 2014/GM/46/Pers purportedly dated 27/11/2014 .....and by the continuous non-payment of an equivalent salary to the Petitioners who are in the same grade as the aforesaid engineers”.*

However, the Petitioners based on the pleadings in paragraph 60 and 62 and as prayed for by prayer (d) of the Petition, move Court to declare *“that the decision as contained in Circular ..... to introduce a ‘Unified Engineering Service’ and / or an ‘E-Scale’ applicable only to the engineers, senior engineering assistants and engineering assistants of the 3<sup>rd</sup> Respondent as most recently given effect to by the payment of salaries on the 24<sup>th</sup> of August, 2016 is a violation and / or continuing violation of the petitioners fundamental rights...”*

Therefore, the core decision the Petitioners are challenging is the decision that is reflected in Circular No 2014/GM/46/Pers. It is through this Circular that the ‘Unified Engineering Service’ and ‘E-Salary Scale’ were created and adopted. Material placed before this Court establishes that the aforesaid Circular was initially published by the e-mails dated 8<sup>th</sup> January 2015 and 9<sup>th</sup> January 2015. All the engineers, senior engineering assistants, and engineering assistants of the 3<sup>rd</sup> Respondent had been paid their salaries in accordance with the above impugned decision, from the salary for the month of January 2015. It is abundantly clear that the payment of salaries as per ‘E-Scale’, which commenced from the month of January 2015, is solely based on the decision reflected in the impugned decision in Circular No 2014/GM/46/Pers. It is in giving effect to the impugned Circular that the payment of salaries based on ‘E-Scale’ had taken place. Therefore, the continuous payment of the salaries on a monthly basis is the effect of the decision in the impugned circular. Such monthly payments cannot be considered a new or a continuing infringement of rights as the alleged infringement of rights had taken place by the creation of the ‘unified engineering service’ and the adoption of ‘E-Salary Scale’ for the employees who fall into the aforesaid service. It is the Respondent’s contention that the establishing a distinct unified service for engineers and adopting E-Salary Scale is justified as such distinction is based on intelligible differentia. In my view non-payment of salaries to others who do not fall within the classification of the ‘unified engineering service’, based on E-Salary Scale, **is not an ‘omission of an act that should be done’** by the 3<sup>rd</sup> Respondent (CEB), unless and until the Court holds that the Petitioners are also entitled to be paid their salaries on the same scale, namely E-Salary Scale.

The sole basis on which the Petitioners contend that the application is not time-barred is that the infringement complained of is ‘continuing’ in nature. However, as already reasoned out, I am unable to hold that there is a ‘continuing infringement’ of the Rights of the Petitioners. The Petitioners do not plead any other ground explaining the delay of nearly nineteen months from the time they became aware of the impugned decision. It is also pertinent to note that there is a delay of four months between the date of the Order in the previous application SC FR 18/2015 and the filing of the present application.

In view of the foregoing reasons, I uphold the preliminary objection of the respondents, that the application is time-barred and therefore dismiss the application. Taking into consideration all the facts and circumstances of this case I make no order on costs.

Chief Justice

L.T.B.Devideniya, J.

I agree.

Judge of the Supreme Court

S. Thuraiaraja, PC, J.

I agree.

Judge of the Supreme Court