

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

In the matter of an application under and in terms of Article 17 and Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Development Co-ordinators' Society,
District Secretariat's Office, Kandy.

S.C.F.R. Application No: 545/2011

Petitioner

Vs.

1. The Secretary,
Ministry of Public Administration and Home
Affairs, Independence Square, Colombo 07.

1A. The Secretary,
Ministry of Public Administration,
Provincial Councils, Local Government,
Democratic Governance,
Independence Square, Colombo 07.

1B. The Secretary,
Ministry of Home Affairs and Fisheries,
Independence Square, Colombo 07.

1C. Mr. Pradeep Yasarathne,
The Secretary, Ministry of Public
Administration and Home Affairs.

2. The Secretary,
Ministry of Finance and Planning,
The Secretariat, Colombo 01.

2A. The Secretary,
Ministry of Finance,
The Secretariat, Colombo 01.

2B. The Secretary,
Ministry of Policy Planning, Economic
Affairs, Child Youth and Cultural Affairs,
The Secretariat, Colombo 01.

2C. Mr. K.M. Mahainda Siriwardhane,
The Secretary, Ministry of Finance,
The Secretariat, Colombo 01.

3. M.N. Junaid,
Co-Chairman, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.
4. C.N.C.W. Mathews,
Co-Chairman, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.
5. B. Wijerathna,
The Secretary, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.
6. Ariyapala de Silva,
Member, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.
7. S.C. Mannapperuma,
Member, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.
8. Deshabandu M. Mackey Mohomed,
Member, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.

9. Prof. Carlo Fonseka,
Member, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.

10. Soma Kotakadeniya,
Member, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.

11. Jerry Jayawardena,
Member, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.

12. Dr. Lionel Fernando,
Member, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.

13. Leslie Devendra,
Member, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.

14. V. Kanagasabapathi,
Member, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.

15. Gunapala Wickramarathna,
Member, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.

15A. Nimal Bandara

15B. Dayananda Widanagamachchi

15C. J. Charitha Rathwatte

15D. Prof. Kithsiri Madapatha Liyanage

15E. Lesli Shelton Devendra

15F. Suresh Shah

15G. Sanath Jayantha Ediriweera

15H. V. Regunadan

15I. Kamal Musthafa

15J. Prof. Gunapala Nanayakkara

15K. Nanadapala Wicramasooriya

15L. Sujatha Cooray

15M. Jerry Jayawardane

15N. S. Thileinadarajah

15O. Dr. Anura Ekanayake

15P. Sebbakuttige Swarnajothi

15Q. P.K.U. Nilantah Piyarathne

15R. N.H Pathirana

15S. H.T Dayananda

15T. T.B. Maduwegedara

15U. Dr.Wimal Karangoda

15V. A. Kadiraweluphillei

Members of the National Salaries and
Carder Commission, Room No: 130, Block 2,
BMICH, Colombo 07.

16. Vidyajothi. Dr. Dayasiri Fernando,
Chairman, Public Service Commission,
No. 117, Nawala Road, Narahenpita,
Colombo 05.

17. The Secretary, Public Service Commission,
No. 117, Nawala Road, Narahenpita,
Colombo 05.

18. Mr. Palitha M. Kumarasinghe P.C.
Member, Public Service Commission,
No. 117, Nawala Road, Narahenpita,
Colombo 05.

19. Mrs. Sirimavo A. Wijeratne,
Member, Public Service Commission,
No. 117, Nawala Road, Narahenpita,
Colombo 05.

20. Mr. S. C. Mannapperuma,
Member, Public Service Commission,
No. 117, Nawala Road, Narahenpita,
Colombo 05.

21. Mr. Ananda Seneviratne,
Member, Public Service Commission,
No. 117, Nawala Road, Narahenpita,
Colombo 05.

22. Mr. N.H. Pathirana,
Member, Public Service Commission,
No. 117, Nawala Road, Narahenpita,
Colombo 05.

23. Mr. S. Thillanadarajah,
Member, Public Service Commission,
No. 117, Nawala Road, Narahenpita,
Colombo 05.

24. Mr. M.D.W. Ariyawansa,
Member, Public Service Commission,
No. 117, Nawala Road, Narahenpita,
Colombo 05.

25. Mr. A. Mohamed Nahiya,
Member, Public Service Commission,
No. 117, Nawala Road, Narahenpita,
Colombo 05.

The 16th to 25th Respondents are the
Members of the Public Service Commission,
No. 117, Nawala Road, Narahenpita,
Colombo 05.

16A. Sathya Hettige, Substituted Chairman,
Public Service Commission, No:177,
Nawala Road, Narahenpita,
Colombo-05.

18A. S.C mannapperuma, Member,
Public Service Commission, No: 177,
Nawala Road, Narahenpita,
Colombo-05.

19A. Ananda Senevirathne, Member,
Public Service Commission, No: 177,
Nawala Road, Narahenpita,
Colombo-05.

20A. N. H. Pathirana, Member,
Public Service Commission, No: 177,
Nawala Road, Narahenpita,
Colombo-05.

21A. S. Thillandarajah, Member,
Public Service Commission, No: 177,
Nawala Road, Narahenpita,
Colombo-05.

22A. A. Mohomed Nahiya, Member,
Public Service Commission, No: 177,
Nawala Road, Narahenpita,
Colombo-05.

23A. Kanthi Wijethunga, Member,
Public Service Commission, No: 177,
Nawala Road, Narahenpita,
Colombo-05.

24A. Sunil. S. Sirisena, Member,
Public Service Commission, No: 177,
Nawala Road, Narahenpita,
Colombo-05.

25A. I.N.Soyza, Member,
Public Service Commission, No: 177,
Nawala Road, Narahenpita,
Colombo-05.

16B. Mr. Sanath. J. Ediriweera,
Chairman, Public Service Commission.

17B. Mr. H.M. Chithrananda, Member,
Public Service Commission.

18B. Mr. G.S.A. de Silva, Member,
Public Service Commission.

19B. Mrs. A.D.N. de Soyza, Member,
Public Service Commission.

20B. Mrs. S.M. Mohomad, Member,
Public Service Commission.

21B. Mrs. R. Nadarajapillei, Member,
Public Service Commission.

22B. Mr. C. Pallegama, Member,
Public Service Commission.

23B. Mr. M.B.R. Pushpakumara, Member,
Public Service Commission.

24B. Mr. N. Selvakumaran, Member,
Public Service Commission.

The 16B to 24B Respondents of Public
Service Commission, No 1200 / 9,
Rajamalwatta Road, Battaramulla.

Substituted Members of the
Public Service Commission

26. W.D. Somadasa,
Director General of Establishment,
Ministry of Public Administration and Home
Affairs, Independence Square,
Colombo 07.

27. Director General of National Budget,
Department of the National Budget,
Ministry of Finance and Planning,
Colombo 01.

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

Respondents

Before: Hon. S. Thuraija, PC, J.
Hon. Janak De Silva, J.
Hon. K. Priyantha Fernando, J.

Counsel:

Saliya Pieris PC with Thanuka Nandasiri for the Petitioner

Sureka Ahmed SSC for the 1st, 2nd, 17th, 27th and 28th Respondents

Written Submissions tendered on:

27.03.2025 by the Petitioner

03.05.2023 by the Respondents

Argued on: 11.03.2025

Decided on: 30.05.2025

Janak De Silva, J.

The Petitioner is a Trade Union registered under Section 10 of the Trade Union Ordinance No. 14 of 1935 as amended (Ordinance). It claims to represent Development Coordinators recruited under the 1999 Graduate Scheme.

The Petitioner claims that Development Coordinators were recruited along with Child Rights Promotion Officers and Social Services Officers and others as more fully set out in the petition.

The core complaint of the Petitioner is that despite having identical qualifications and appointed under the same scheme, the Development Coordinators were placed on MN-4 salary scale while the others were placed on the higher salary scale MN-5.

The Petitioner complains that the fundamental rights of the Petitioner and that of its members guaranteed by Article 12(1) of the Constitution have been infringed for one or more of the following reasons:

1. Failure to formulate an acceptable Scheme of Recruitment and Promotion for the Development Coordinators;

2. Failure to place Development Coordinators in the category of "Field/Office Based Officers";
3. Failure to place them in salary code MN-5 or MN-6 in the new Scheme of Recruitment;
4. Failure to place them in the same salary code as the one applicable to Child Rights Promotion Officers; and
5. Failure to allow the Development Coordinators to apply for the Limited Competitive Examination to the Sri Lanka Planning Service Class II/II or to the Sri Lanka Administrative Service Class III.

The Respondents deny any violation of the fundamental rights of the Development Coordinators and have set out in some detail the steps taken to formulate a scheme of recruitment and promotion for them as well as opening of other promotional prospects. The Respondents have in addition raised a preliminary objection that the Petitioner has no *locus standi* to have and maintain this application.

I will first address the preliminary objection as an answer in the affirmative negates the need to consider the merits of this application.

Article 126 (2) of the Constitution reads as follows:

*“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 Court as may be in force, apply to the Supreme Court by way of a petition in writing addressed to such Court...”* (emphasis added)

It is a trite rule of interpretation that when the words of the Constitution are clear, precise and unambiguous and there is no absurdity, repugnance or inconsistency with the rest of the Constitution, the words themselves most accurately declare the intention of the designers of the Constitution.

The intention of the framers of the Constitution is clear. The *locus standi* for filing a fundamental rights application was limited to *any person whose fundamental rights or language rights has been or about to be infringed or an attorney-at-law on his behalf*.

The Court has not been dogmatic in its approach to constitutional interpretation. It has followed a pragmatic approach and resorted to several interpretative rules in interpreting the Constitution. Some of them are:

- (1) Original intent [See ***Somawathie v. Weerasinghe* (1990) 2 Sri LR 121**].
- (2) Textualist [See ***Somawathie* (supra. at 128)**, **S.C. Reference No. 3/2012; *Attorney General v. Dr. Shirani Bandaranayake and Others* (S.C. Appeal 67/2013, S.C.M. 21.02.2014)**. For US approach, see ***Lujan v. National Wildlife Federation*, 497 U. S. 871 (1990)**, where the US Supreme Court insisted standing must satisfy Article III's literal requirements, narrowing associational suits absent direct member injury. See also ***Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016)**].
- (3) Organic [See **Local Authorities (Special Provisions) Bill [Decisions of the Supreme Court on Parliamentary Bills (1991-2003) Vol. VII page 389**. For US approach see ***Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167 (2000)**].
- (4) Hybrid [See ***R. Sambanthan and Others v. Attorney General and Others* (S.C. (F/R) Nos. 351-356, 358-361/2018, S.C.M. 13.12.2018 at page 64)**].
- (5) Structuralism [See **Nineteenth Amendment to the Constitution (2002) [Decisions of the Supreme Court on Parliamentary Bills (1991-2003) Vol. VII page 311; Nineteenth Amendment to the Constitution (2015) [Decisions of the Supreme Court on Parliamentary Bills (2014-2015) Vol. XII page 26; *R. Sambanthan* (supra); *Dr. Shirani Bandaranayake* (supra) at 18]**.]
- (6) Consequences/Prudence [See ***Sriyani Silva v. Iddamalgoda, Officer-in-Charge, Police Station, Payagala and Others* (*Sriyani Silva* 2) (2003) 2 Sri LR 63 at 76]**.]
- (7) Practices [See ***Edward Francis William Silva PC and three others v. Shirani Bandaranayake and three others* [(1997) 1 Sri LR 92 at page 94]**.]
- (8) Rule of Law [See ***R. Sambanthan* (supra) at 66]**.]

Original intention is an accepted rule of constitutional interpretation. By its application, a court seeks to ascertain the original meaning ascribed to constitutional provisions by its framers.

In **Somawathie [supra]** the petitioner complained of the infringement of the fundamental rights guaranteed by Articles 11 and 13 of the Constitution. The complaint was not based on the violation of the petitioner's own rights. It was based on the violation of the rights of her husband who was alive but in custody at the time the proceedings were instituted. Although the petitioner in that application was the wife of the detainee, the petition was accompanied by an affidavit of the detainee.

Amarasinghe, J. (with T.D. Bandaranayake, J. agreeing) held (at page 124):

*“How should the words of this provision of the **Constitution** be construed? It **should be construed according to the intent of the makers of the Constitution.** Where, as in the Article before us, the words are in themselves precise and unambiguous and there is no absurdity, repugnance or inconsistency with the rest of the Constitution, the words themselves do best declare that intention. No more can be necessary than to expound those words in their plain, natural, ordinary, grammatical and literal sense.”* (emphasis added)

Amarasinghe, J. went on to hold (ibid.) that:

*“... Article 126 (2) confers a recognized position **only upon the person whose fundamental rights are alleged to have been violated and upon an attorney-at-law acting on behalf of such a person. No other person has a right to apply to the Supreme Court for relief or redress in respect of the alleged infringement of fundamental rights.**”* (emphasis added)

However, Kulatunga, J. dissented and held (at page 133) that a strict construction of Article 126(2) is not warranted at all in the circumstances of the case. He went on to hold that if fundamental rights are to have any meaning particularly to the weak and the helpless person whose freedom to have prompt recourse to this Court by himself or by an Attorney-at-Law is impeded due to circumstances beyond his control, it is the duty of this Court to construe Article 126(2) purposively and not literally.

Kulatunga, J. was of the view that this would not do violence to the intention of the legislature and even if there be a doubt in that regard, he would resolve it in favour of a construction which would advance the remedy for violation of fundamental rights, provided by Article 17 of the Constitution. However, it must be added that Kulatunga, J.

(at page 132) was of the view that Article 126(2) did not allow the Court to entertain public interest petitions.

Nevertheless, in ***Sriyani Silva v. Iddamalgoda, Officer-in-Charge, Police Station, Payagala and Others*** [(2003) 1 Sri LR 14 at 21] (***Sriyani Silva 1***), Shirani Bandaranayake, J. (as she was then) (with S.N. Silva, C.J. agreeing) took a slightly different view in the circumstances of the case and went on to hold that:

*“[...] when there is **a casual link between the death of a person and the process which constitutes the infringement of such person’s fundamental rights, any one having a legitimate interest could prosecute that right** in a proceeding instituted in terms of Article 126(2) of the Constitution. There would be no objection in limine to the wife of the deceased instituting proceedings **in the circumstances of this case.**”* (emphasis added)

The factual position in that case was that on 12.6.2000 the husband of the petitioner was arrested and kept in custody at the Payagala Police Station where he remained in custody until he was produced before the Magistrate on 17.06.2000 when he was remanded to prison. On 20.6.2000 he died at the Remand Prison. There was prima facie evidence including medical evidence that the deceased was assaulted whilst in prison custody and his death resulted by reason of such assault.

A petition was filed on 18.7.2000 on behalf of the petitioner (the deceased detainee). On 23.8.2000, the day it was for support, the Court allowed counsel to amend the petition by substituting the widow of the deceased as the petitioner.

At the hearing of the application two preliminary objections were raised on behalf of the respondents. One was that the petitioner had no *locus standi* to make the application in view of Article 126(2) of the Constitution which provides that the person whose rights are infringed may by himself or by an attorney-at-law apply for relief. The right is personal to the aggrieved person. A legal representative cannot initiate proceedings under Article 126(2) on behalf of a deceased.

The majority in overruling the preliminary objection, disregarded the original intent as ascribed by Amerasinghe J. in ***Somawathie (supra)*** and sought to provide an expansive

interpretation to Article 126(2) of the Constitution having regard to the consequences of adopting an original intent or textual interpretation.

Shirani Bandaranayake, J. sought to explain (at page 21) the reasoning for her conclusion as follows:

“Consequently, the deceased detainee, who was arrested, detained and allegedly tortured, and who met with his death subsequently, had acquired a right under the Constitution to seek redress from this Court for the alleged violation of his fundamental rights. It could never be contended that the right ceased and would become ineffective due to the intervention of the death of the person, especially in circumstances where the death in itself is the consequence of injuries that constitute the infringement. If such an interpretation is not given it would result in a preposterous situation in which a person who is tortured and survives could vindicate his rights in proceedings before this Court, but if the torture is so intensive that it results in death, the right cannot be vindicated in proceedings before this Court. In my view a strict literal construction should not be resorted to where it produces such an absurd result. Law, in my view, should be interpreted to give effect to the right and to suppress the mischief.”

Edussuriya, J. dissented and held (at page 27) that the intention of the legislature under Article 126(2) was to grant relief only to the person whose fundamental rights had been violated. He further held that Article 17 read with Article 126(2) provides a remedy to those whose fundamental rights have been infringed and Article 126(2) categorically states that the person whose fundamental rights have been infringed, himself or by an attorney-at-law on his behalf should make an application for redress. He was of the view that there is nothing therein which even remotely suggests that a widow has such a right or that such right devolves on a widow or heirs of a person whose fundamental rights have been infringed. In the circumstances he concluded that it would be preposterous on the part of Court to hold that the legislature intended that the right to apply for redress should pass to the heirs or that the heirs of a deceased whose fundamental rights had been infringed were entitled to apply for relief under Article 126 (2).

I am in respectful agreement with the majority judgment and reasons given therein for resorting to an expansive or liberal interpretation of Article 126(2) rather than an original or textual interpretation as such an approach would have led to an absurd interpretation. All what law enforcement officers have to do to avoid a challenge to their unlawful acts is to ensure that the person whose fundamental rights they infringed is not alive to prosecute such an application.

However, it must be noted that Shirani Bandaranayake, J. did not attempt to lay down a broad principle in allowing any person to institute a fundamental rights application on behalf of a third party. Instead, much reliance was placed on the circumstances of the case in holding that the wife of the deceased was entitled to prosecute the fundamental right of the deceased *where there is a casual link between the death of a person and the process which constitutes the infringement of such person's fundamental rights*.

The *locus standi* of the wife of the deceased in ***Sriyani Silva 1 (supra)*** was revisited by a different bench when the merits of the fundamental rights application were examined in ***Sriyani Silva v. Iddamalgoda, Officer-in-Charge, Police Station, Payagala and Others [(2003) 2 Sri LR 63] (Sriyani Silva 2)***. Fernando, J. justified a broad interpretation to Article 126(2) of the Constitution to permit the lawful heirs and/or dependents of the deceased to institute proceedings for the following reasons:

1. Articles 11 and 13(4) by necessary implication recognize the right to life. Hence if a person died by reason of torture or unlawful death (by the executive) the right of any person to complain against violation of a fundamental right guaranteed by Article 17 read with Article 126(2) should not be interpreted to make the right illusory. Article 126(2) should be interpreted broadly especially in view of Article 4(d) which requires the court to "respect, secure and advance" fundamental rights.
2. The deceased's fundamental rights under Articles 11, 13(2) and 17 were infringed by the 2nd respondent and by the 1st respondent on the ground of culpable inaction to monitor the activities of his subordinates. The deceased's rights accrued or devolved on the petitioner and their minor child. The deceased was put to death "in order to prevent him totally and permanently from complaining." On that ground also Article 126(2) should be interpreted expansively.

3. Article 11 guarantees freedom from torture and from cruel and inhuman treatment or punishment. Unlawfully to deprive a person of life, without his consent or against his will, would certainly be inhuman treatment, for life is an essential precondition for being human. In any event, if torture or cruel treatment or punishment is so extreme that death results, to hold that no one other than the victim can complain will result in the same anomalies, inconsistencies and injustice as in the case of Articles 13(4) and 17.
4. Article 11 [read with Article 13(4)], recognises a right not to deprive of life, whether by way of punishment or otherwise and, by necessary implication, a right to life. That right must be interpreted broadly, and the jurisdiction conferred by the Constitution on this Court for the sole purpose of protecting fundamental rights against executive action must be deemed to have conferred all that is reasonably necessary for this Court to protect those rights effectively.

I have no doubt that the reasons given for a broad interpretation of Article 126(2) is well founded in the circumstances of the case. Nevertheless, I do not read *Sriyani Silva 2* to have expanded the test of *locus standi* beyond *Sriyani Silva 1*. The conclusions in both cases are specific to the circumstances where the death of the deceased, resulting from the actions or inactions of the executive, prevented him from impugning such executive actions or inactions. In such circumstances, the lawful heirs and/or dependents of the deceased have a right to institute fundamental rights proceedings to vindicate the rights of the deceased.

The liberal interpretation of Article 126(2) adopted in ***Sriyani Silva 1 (supra)*** and ***Sriyani Silva 2 (supra)*** was reaffirmed in ***Lama Hewage Lal (deceased) & Rani Fernando (wife of deceased Lal) v. OIC, Minor Offences, Seeduwa Police Station & Others [(2005) 1 Sri LR 40]***. In that case, the deceased suffered fatal injuries due to an assault whilst he was in the custody of the prison authorities. The petition was filed by the wife and his three minor children.

Shirani Bandaranayake, J. held (at page 45) as follows:

“The question on ‘locus stand’ has been considered by this Court not only in the decision which considered the preliminary objection in Kotabadu Durage Sriyani

Silva (Supra), but also in the final hearing of the same case (*Supra*). **It is therefore settled law that the lawful heirs and/or dependents of a person who is deceased as a result of an act of torture should be entitled to a declaration of the violation and compensation.**” (emphasis added)

Moreover, in ***Mohammed Rashid Fathima Sharmila v. K.W.G. Nishantha & Others*** [S.C. F.R. Application No. 398/2008, S.C.M. 03.02.2023 at page 5], Aluwihare, P.C., J. reaffirming the same liberal interpretation for Article 126(2), held that:

“Earlier, the position pertaining to *locus standi* was that a Petitioner can complain only of the violation of his or her own fundamental rights. Action could only be filed by the Petitioner or by an Attorney-at-law acting on the Petitioner’s behalf, as per a “plain, natural, ordinary, grammatical and literal” reading of Article 126(2) (*Somawathie v Weerasinghe* (1990) 2 Sri LR 121 at 124). Subsequently, however, with the pronouncement of the principles laid down by Fernando J. in the case of *Kotabadu Durage Sriyani Silva v Chanaka Iddamalgoda, Officer-in-Charge, Police Station Payagala* (2003) 1 Sri LR 14, **it is now well-established and solidified law that the next of kin has a right to sue on behalf of the deceased, in order to uphold the right to life implicit in Article 13(4).**” (emphasis added)

Hence where the death of the deceased was brought about by executive or administrative actions or inactions of persons responsible for the violation of the fundamental rights of the deceased, the right of the next of kin to institute a fundamental rights application to vindicate such rights of the deceased is now firmly established. However, this principle does not assist the Petitioner in establishing its *locus standi* in this application.

Similarly, it is now firmly established that public interest litigation has been recognized by the Supreme Court in the exercise of its fundamental rights jurisdiction [See ***Bulankulama & Others v. Secretary, Ministry of Industrial Development & Others*** (2000) 3 Sri LR 243; ***Vasudeva Nanayakkara v. Choksy & Others (John Keells Case)*** (2008) 1 Sri LR 134; ***Sugathapala Mendis & Another v. Chandrika Kumaratunga & Others*** (2008) 2 Sri LR 339; ***Ravindra Gunawardena Kariyawasam v. Central Environment Authority & Others*** (S.C..F.R. Application No. 141/2015, S.C.M. 04.04.2019), ***Ceylon Electricity Board***

***Accountants' Association v. Hon. Patali Champika Ranawaka & Others* (S.C.F.R. Application No. 18/2015, S.C.M. 03.05.2016 at 14-15].**

However, one must bear in mind that the acceptance of public interest litigation is not an acknowledgment of the right of any person to vindicate the fundamental rights of a third party. On the contrary, it is an acknowledgment of the right of any person to institute a fundamental rights application to vindicate a fundamental right he enjoys with the rest of the community.

Nevertheless, the present application is not framed as a public interest litigation and indeed cannot be so characterized anyway. The Petitioner claims that due to the impugned actions and inactions, the fundamental rights of the Petitioner Trade Union as well as that of its members have been violated. None of the members of the Trade Union have been included as Petitioners. I do not find any material to support the claim that the fundamental rights of the Petitioner have been infringed. Its claim arises from the allegation that the fundamental rights of its members, namely Development Coordinators have been infringed.

I must add in passing that the recognition by the Supreme Court of the availability of public interest litigation to espouse fundamental rights is in harmony with comparative developments in India and England.

The Supreme Court of India has adopted a liberal interpretation to recognize the availability of public interest litigation to advance fundamental rights enjoyed by the citizenry [See ***Bandhua Mukti Morcha v. Union of India* (A.I.R. 1984 S.C. 802); *Maharaj Singh v Uttara Pradesh* (A.I.R. 1976 S.C. 2602); *S.P. Gupta v Union of India* (A.I.R. 1982 S.C. 149)].**

The English Courts have invoked the remedy of *actio popularis*, which derives from Roman Law, to broaden the status of standing in suitable cases [See ***R v. Inland Revenue Commissioners' ex-parte National Federation of Self-Employment and Small Businesses Ltd.* (1982) A.C. 617** per Lord Diplock; ***R v. Greater London Council ex-parte Blackburn* (1976) 1 W.L.R. 550; Wade (Administrative Law, 9th Ed., pages 692-693]. *Actio popularis* may be defined as a 'right resident in any member of a community to take legal action in vindication of a public interest' [***South West Africa, Ethiopia v. South Africa,*****

Second phase judgment, ICJ GL No 46, [1966] ICJ Rep 6, ICGJ 158 (ICJ 1966), 18th July 1966, United Nations [UN]; International Court of Justice [ICJ]].

Our jurisprudence has also evolved to the point of allowing incorporated bodies with legal personality to vindicate fundamental rights guaranteed to the legal entity by Article 12(1) of the Constitution [See *Janatha Finance & Investments Ltd v. Liyanage & Others* (1983) 2 Sri LR 111; *Smithkline Beecham Biological S. A. & Another v. State Pharmaceutical Corporation of Sri Lanka & Others* (1997) 3 Sri LR 20; *Leader Publications (Pvt) Ltd v. Ariya Rabasinghe, Director of Information & Competent Authority & Others* (2000) 1 Sri LR 265; *Environmental Foundation Limited v. Urban Development Authority of Sri Lanka* (2009) 1 Sri LR 123].

In a long line of cases, it has been clearly held that a corporation sole must be expressly created by a legislative act [See *Land Commissioner v. Ladamuttu Pillai* (62 NLR 169 at 174, 182-183); *M.R. Singho Mahatmaya v. The Land Commissioner* (66 NLR 94); *The Superintendent, Deeside Estate, Maskeliya v. Ilankai Thozhilar Kazhakam* (70 NLR 279 at 281); *The Superintendent, Nakiadeniya Group, Nakiadeniya v. Cornelishamy* (71 NLR 142 at 143); *Sri Lanka Transport Board v. Colombo Metropolitan Bus Company and Others* (2008) 1 Sri LR 1 at 7].

The question is whether a registered Trade Union such as the Petitioner has been vested with legal personality.

In examining this issue, it must be borne in mind that Section 30 of the Ordinance declares that a registered Trade Union may sue or be sued in its registered name. Moreover, Section 42 of the Ordinance empowers a registered Trade Union to own property through its trustees. One may contend that these provisions point to an intention on the part of the legislature to vest legal personality on a registered Trade Union. Nevertheless, there is no express provision in the Ordinance vesting legal personality on a registered Trade Union.

In *Ceylon Mercantile Union v. The Insurance Corporation of Sri Lanka* (80 NLR 309 at 313) Sharvananda, J. (as he then was) held that although a registered Trade Union has been endowed by the legislature with many rights characteristic of a Corporation, rights which an unincorporated Corporation does not possess, a registered Trade Union is not a legal

person. He went on to hold (at page 314) that the legislature has not made any provision giving legal sanction for a registered Trade Union to institute an action on behalf of its members in a Court of law.

This decision was cited with approval and followed in ***Ceylon Electricity Board Accountants' Association (supra)*** where a fundamental rights application was made by a registered Trade Union on behalf of its members. Sripavan, C.J. went on to hold (at page 15) that in the absence of a specific provision permitting a Trade Union to institute action on behalf of its members, the petitioner Union (the Trade Union in that case) cannot have and maintain the application on behalf of its members in terms of Article 17 read with Article 126(2) of the Constitution and dismissed the application. In doing so, Sripavan, C.J. emphasized that the application is not a public interest litigation nor has it been filed on behalf of a group of persons who are in a disadvantaged position by reasons of poverty or some disability.

In ***Krishantha Kumara and Others v. Dissanayake and Others [S.C.F.R. Application No. 460/2017, S.C.M. 01.03.2023]*** a similar objection was raised. There the 4th petitioner was a registered Trade Union under Section 10 of the Ordinance. The 1st to 3rd petitioners were office bearers and members of the 4th Trade Union. Court having considered the decisions in ***Ceylon Electricity Board Accountants' Association (supra)*** and ***Environmental Foundation Limited (supra)*** held (at pages 20-21) that it is clear that the *locus standi* of an unincorporated body that comes before Court in an application filed under Article 17 read with Article 126(2) is now settled and the Court has permitted the members of the unincorporated body to pursue the application in the instances when their rights guaranteed under the Constitution has been violated by the conduct of the respondents. I observe that the Court has at the end made a declaration that the fundamental rights of the *petitioners* have been violated. However, the declaration made in favour of the 4th petitioner is inconsistent with the conclusion of Court on the preliminary objection. The ratio of ***Krishantha Kumara and Others (supra)*** does not in anyway seek to disturb the principle established in ***Ceylon Electricity Board Accountants' Association (supra)***. On the contrary it reaffirms it.

This position was revisited in ***Engineering Diplomates Association and Others v. Abeygunasekara and Others*** [S.C.F.R. Application No. 531/2011, S.C.M. 20.07.2023] where the 1st and 2nd petitioners were registered Trade Unions and the 3rd to 8th petitioners were members of these two Trade Unions. An objection was raised on the *locus standi* of the 1st and 2nd petitioners to maintain the application. Court re-affirmed the position expounded in ***Krishantha Kumara and Others (supra)***. I am mindful that in this instance also the Court has at the end made a declaration that the fundamental rights of the *petitioners* have been violated. However, the declaration made in favour of the 1st and 2nd petitioners is inconsistent with the conclusion of Court on the preliminary objection. The ratio of ***Engineering Diplomates Association and Others (supra)*** does not in any way seek to disturb the principle established in ***Ceylon Electricity Board Accountants' Association (supra)***. Once again the principle was reaffirmed.

I am firmly of the view that the principle expounded in ***Ceylon Electricity Board Accountants' Association (supra)*** is correct upon an original intent interpretation.

In **Budgetary Relief Allowance of Workers Bill [Decisions of the Supreme Court on Parliamentary Bills (2016-2017) Vol. XIII page 31 at 32]** Court held:

"It must be noted that the Constitution uses the word 'citizen' and 'person' in several of its Articles. In Chapter III dealing with Fundamental Rights a 'citizen' has been guaranteed the Fundamental Rights set out in Articles 12 (2) and 14 (1) whereas a 'person' has been guaranteed the Fundamental Rights in Articles 10, 11, 12 (1) and 13. This clearly shows that the legislature has used different words with a specific distinction in mind."

In my view, the word "person" in Article 126(2) of the Constitution must be given the same meaning as "person" appearing in Articles 10, 11, 12(1), 12(3), 13 and 17. This is because Article 17 read with 126(2) provides the remedy for any infringement of the fundamental rights guaranteed in Articles 10, 11, 12(1), 12(3) and 13 of the Constitution.

The word "person" was not defined in the Constitution when enacted. It continues to be the same. Nevertheless, Article 158 as enacted states that *in that Article* "person" includes any body of persons or any authority. This provides cogent evidence of the intention of the framers of the Constitution to provide an expansive definition to the word "person"

in Article 158 whilst not doing so for the same word where it appears elsewhere. There was no need for the definition of “person” in Article 158 to include any body of persons if such body of persons came within the word “person” as used in other parts of the Constitution.

Moreover, the word “citizen” in Article 14A and 121(1) has been defined to include, for the purposes of those Articles, a body, whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens [See 19th Amendment to the Constitution, 20th Amendment to the Constitution].

The amendment indicates that the legislative intent was to expand the meaning of the term “citizen” in Articles 14A and 121(1) to include a body, whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens. This brings a Trade Union within the term “citizen” for the purposes of Article 14A and 121(1).

Nevertheless, the legislature did not deem it fit to provide a similar expansive interpretation to “person” in Article 17 read with Article 126(2) of the Constitution. In **Local Authorities (Special Provisions) Bill [Decisions of the Supreme Court on Parliamentary Bills (1991-2003) Vol. VII page 389 at 394]** it was held that the Constitution has to be looked at as an organic whole and its terms cannot be fixed to meanings they may have had at the time of the enactment. Even if I am to adopt this rule of constitutional interpretation, the amendments referred to above will apply more forcefully in such context in preventing the word “person” in Article 17 and 126(2) being interpreted to include an unincorporated body.

The inclusion of freedom of association [Art. 14(1)(c)] and union formation [Art. 14(1)(d)] as fundamental rights suggest a structural imperative to enable collective enforcement thus validating a structural interpretation leading to interpreting “person” in Article 126(2) to include a registered Trade Union. In ***National Association for the Advancement of Colored People v. Alabama* [357 U.S. 449 (1958)]** the United States Supreme Court used structural First Amendment norms to protect organizational standing.

However, structuralism cannot overlook other parts of the Constitution which impinges on the interpretation arising for consideration. The original intent reflected in the definition of “person” in Article 158 which has not been adopted in Article 126(2) negates a structuralist interpretation over an original intent. The subsequent amendments of Articles 14A and 121(1) referred to above puts the issue beyond any debate.

Mr. Pieris urged Court to be mindful of Article 4(d) of the Constitution which states that the fundamental rights which are by the Constitution declared and recognised shall be *respected, secured and advanced* by all the organs of government. A purposive interpretation is what Mr. Pieris urges us to adopt. A purposive interpretation will require an interpretation by intended remedial objectives and broad rights-protection aims. A purposive reading of Article 126(2) would facilitate collective remedies, mirroring U.S. citizen-suit statutes like the Endangered Species Act 1973, where courts construed “any person” broadly to advance enforcement [See ***Bennett v. Spear*, 520 U.S. 154 (1997)**].

I am not averse to adopting a purposive interpretation of the Constitution to advance collective remedies. Court must always strive to exercise its just and equitable jurisdiction in accordance with the constitutional directive enshrined in Article 4(d).

Nevertheless, Court cannot disregard the plain meaning in Article 126(2) of the Constitution and give it an expanded meaning taking refuge behind Article 4(d). The original intent as well as subsequent amendments made by the legislature clearly indicates that “person” in Article 126(2) of the Constitution does not cover an unincorporated body such as a registered Trade Union.

In ***Ceylon Electricity Board Accountants’ Association*** (*supra.* at page 12) Sripavan, C.J. held:

“Where the scheme of the Constitution clearly shows that certain words or phrases were deliberately omitted by the legislature for a particular purpose or motive, it is not open to the Court to add those words either by conforming to the supposed intention of the legislature or because the insertion suits the ideology of the Judges deciding the case.”

I must hasten to add that had the petition named one or more of the members of the Petitioner society as a petitioner, the objection raised by the Respondents must be dismissed by allowing such members to proceed with this application. [See **Krishantha Kumara and Others (supra), Engineering Diplomates Association and Others (supra)**].

My attention has been drawn to the decision of the Court of Appeal in **Lanka Viduli Podu Sevaka Sangamaya v. Electricity Board [(2019) 2 Sri LR 91 at 102]** where Court appears to take the view that Section 2(s) of the Interpretation Ordinance may enable a Trade Union to file a fundamental rights application.

Section 2(s) of the Interpretation Ordinance reads as follows:

“In this Ordinance and in every written law. whether made before or after the commencement of this Ordinance, unless there be something repugnant in the subject or context –

"person" includes any body of persons corporate or unincorporate;”

This interpretation has no application to Article 126(2) for two reasons.

Firstly, the Interpretation Ordinance has no application in the interpretation of constitutional provisions. In **S.C. Reference No. 01/2014, S.C.M. 10.11.2014 at page 13** Court in its Opinion held that the principles and assumptions involved in the interpretation of a Constitution are different from those which apply when interpreting a statute or an ordinary piece of legislation. In this regard I must emphasize that Opinions and Determinations of the Supreme Court have the same status as that of its judgments [See **Bandaranaike v. Attorney-General (1982) 2 Sri LR 786 at 792**]. Sharvananda [Fundamental Rights in Sri Lanka, Arnold’s International Printing House, 1993, page 43] states that the Interpretation Ordinance does not apply to the interpretation of the provisions of the Constitution, as the Constitution was enacted in the exercise of Constitutional power and not in the exercise of the legislative power of Parliament [See also **Sri Lanka Telecommunications Bill (Decisions of the Supreme Court on Parliamentary Bills (1991-2003) Vol. VII page 23**].

Secondly, Although Sharvananda (ibid. pages 43-44) states that Section 2 of the Interpretation Ordinance *may* legitimately be referred to *appreciate* the concept of “person”, Section 2 has no application in the context of Article 126(2) of the Constitution for the reasons expounded above.

In summary, the original intent rule of interpretation clearly shows that the framers of the Constitution intended the word “person” in Article 126(2) of the Constitution to have a narrow textualist meaning. It did not include unincorporated bodies such as a registered Trade Union. Article 158 makes this quite clear. The subsequent amendments made to Articles 14A and 121(1) reflects that this original intent was maintained although the word “citizen” was given an expanded meaning to include a body, whether incorporated or unincorporated.

For all the foregoing reasons, I hold that the Petitioner does not have *locus standi* to maintain this application. The preliminary objection is upheld.

The application is dismissed without costs.

JUDGE OF THE SUPREME COURT

S. Thuraiaraja, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J.

I agree.

JUDGE OF THE SUPREME COURT