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

In the matter of an application made under
Article 17 read with Article 126 of the
Constitution of the of the Democratic Socialist
Republic of Sri Lanka

Case No: SC/FR/218/2013

**1. Ven. Welimada Dhammadinna
Bhikkhuni,**
Bhikkhuni Educational Academy,
Kalundewa Road,
Dambulla.

**2. Ven. Inamaluwe Sri Sumangala
Thero,**
Hon. President of the Rangiri
Dambulla Sangha Sabhawa,
Maha Nayaka of Rangiri Dambulla
Chapter of Siyam Maha Nikaya,
Golden Temple,
Dambulla.

PETITIONERS

Vs.

1. R.M.S. SARATH KUMARA
Commissioner General,
Department of Registration of
Persons,
Jawaththa Road, Colombo,
No. 45, Keppetipola Mawatha,

Colombo 05.

1(A). R.M.P RATHNAYAKA

Commissioner General,
Department of Registration of
Persons,
Jawaththa Road, Colombo,
No. 45, Keppetipola Mawatha,
Colombo 05.

2. CHANDRAPREMA GAMAGE

Commissioner General,
Department of Buddhist Affairs,
"Dahampaya",
No. 135, Srimath Anagarika
Dharmapala Mawatha,
Colombo 07.

2(A). M.S.P SURIYAPERUMA

Commissioner General,
Department of Buddhist Affairs,
"Dahampaya",
No. 135, Srimath Anagarika
Dharmapala Mawatha,
Colombo 07.

3. HON. ATTORNEY GENERAL

Attorney-General's Department,
Colombo 12.

RESPONDENTS

Before : Hon. Murdu N. B. Fernando, P.C., CJ.
Hon. E.A.G.R. Amarasekara, J.
Hon. Mahinda Samayawardhena, J.

Counsel : Navin Marapana, PC. with Nandapala Wickramasooriya,
Tharanatha Palliyaguruge and Uchitha Wickramasinghe
instructed by Ms. Eashanie Palliyaguruge for the Petitioners.

Ms. Kanishka de Silva Balapatabendi, DSG, for
the Respondents.

Argued on : 24.10.2024

Decided on : 16.06.2025

E. A. G. R. Amarasekara, J.

This application was filed before this Court against the Respondents named thereunder and in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as “the Constitution”), alleging the failure to issue National Identity Card (hereinafter sometimes referred to as “NIC) to the 1st Petitioner recognizing her status as “Bhikkhuni”, amounts to an infringement or imminent infringement and/or continuing infringement of the 1st Petitioner’s right to equal treatment affirmed under Article 12(1) of the Constitution.

The 1st Petitioner is a Bhikkhuni, who has awaited the higher ordination as an Upasampanna Bhikkhuni by the performance of Upasampadha Vinaya Karma by the Rangiri Dambulu Rajamaha Vihara Sangha Sabhawa (Rangiri Dambulla Chapter of Siyam Maha Nikaya) (hereinafter referred to as the “Rangiri Dambulu Sangha Sabhawa” or “Rangiri Dambulu Chapter”) as at the date of the application.

The 2nd Petitioner is the Chief Incumbent of the Golden Temple in Dambulla belonging to the said Rangiri Dambulu Sangha Sabhawa, which is affiliated to the Syamopali Maha Nikaya -

Dambulla Parshavaya (Chapter) and is recognized by the Ministry of Buddha Sasana as well as the Department of Buddhist Affairs having been established on 20.06.1985. The Rangiri Dambulu Sangha Sabhawa or the Rangiri Dambulu Chapter has a history of almost 40 years by now, and is one of the 31 Buddhist Chapters present in Sri Lanka, comprising a membership of over 4,000 Bhikkhus and Bhikkhunis. It appears that the Respondent has taken up the position that even though there are 31 Buddhist Chapters, Mahanayake Theros of Malwathu, Asgiri, Amarapura and Ramanna Nikayas are the final arbiters of the matters relating to this application and they have the authority over the discipline of the Buddhist Monks who have to follow the advise given by them. The reason for this may be that other chapters are, one way or the other, affiliated to these three main Nikayas. The said Rangiri Dambulu Chapter appears to be affiliated to Syamopali or Siyam Nikaya of which Malwathu and Asgiri are Chapters or 'Parshawa'.

It is stated in the Petition that, since the first ordainment of Bhikkhunis by performance of the Upasampadha Vinaya Karma in 1998, there have been a number of similar ordainments of Bhikkhunis conducted regularly to date. It is common ground that the Bhikkhuni Sasanaya existed in Sri Lanka, from the time of Sangamiththa Maha Therani, but did not survive by the time of the Polonnaruwa Kingdom. It is also evinced by the documents filed by the Respondent itself that the Lord Buddha, after refusing to establish Bhikkhuni Sasanaya several times, with the ardent requests from Ananda Thero finally allowed to ordain women commencing from Prajapathi Gothami. Thus, reference to first ordainment in 1998 in the Petition seems to be an attempt by the Rangiri Dambulu Chapter to revive what disappeared during the time of Polonnaruwa Kingdom.

As per the Petition, there are around 900 Upasampanna Bhikkhunis and 2200 novice (Samanera) Bhikkhunis belonging to the Rangiri Dambulu Sangha Sabhawa or Rangiri Dambulu Chapter. Thus, in total, there are more than 3000 Bhikkhunis, who are members of the Rangiri Dambulu Sangha Sabhawa residing in 237 Bhikkhuni Aramas. Furthermore, as per the Petition, many of the novices (Samanera) Bhikkhunis are awaiting ordainment. This indicates that, after commencing in 1998 as mentioned above, several ordainments have taken place throughout the years, and several women have become bhikkhunis under the said Rangiri Dambulu Chapter. There may be considerable number of laity who worships or obtain religious services or needs through the temples attached to Rangiri Dambulu Chapter who now recognize this Bhikkhunis as part of their Chapter. Not only that, Issuance of passports (vide P7, P7a) and

issuance of degree certificates (vide P8) including the nomenclature ‘Bhikkhuni’, now shows even the other government departments and institutions have started recognizing the existence of Bhikkhunis in the society. Even though, it is apparent that Mahanayaka Theros of the main three Nikayas have advised the Respondents indicating that there is no Bhikkhuni Sasanaya and even objected to the recognition of such institution (vide 2R1, 2R2, 2R3, 2R4 etc.), as per P13 and P14 tendered with an Affidavit of the 1st Petitioner dated 25.08 2024, it appears some of the Mahanayake Theros have signed a certificate recognizing the service tendered by one Bhikkhuni named Kothmale Siri Sumedha. Some of the signatories appears to have given letters to the 2nd Respondent to indicate that such signatures were not placed by them or placed inadvertently by relying on the organizers of the said event (vide 2R9 and 2R10) but there are more signatories to the said certificate who have not denied it. Even the authors of 2R9 and 2R10 has not given any Affidavit in that regard. The newspaper articles filed by the Petitioners marked as P3a, P3b, P3c, P3d, P3e, P3f, P3g, P3h, P3i, P3j, and P12 shows that there had been considerable publicity to the functions or establishment of this Bhikkhuni Sasanaya in 1998 and thereafter. Even though, the Respondents have taken up the position that it is the Mahanayakes of three main Nikayas, who are the final arbiters of the issue with disciplinary authority, it is not shown that any such disciplinary measures were taken against such ordainments. This indicates either the Rangiri Dambulu Chapter is independent to take decisions on matters similar to what is in issue in the matter at hand or the Mahanayake Theros, of whose opinion the Petitioners rely on, have not shown a keen interest to stop the growth of the emerging Bhikkhuni Sasanaya till this issue emerged as to the refusal of issuing of a NIC. However, the above facts indicate that there is an emerging Bhikkhuni Sasanaya attached to the Rangiri Dambulu Chapter from 1998 with considerable number Buddhist nuns (Upasana or Samanera) and it has a de facto identity as an order consisting of Bhikkhunis.

The Petitioners state that since 1998, the Department of Registration of Persons issued NICs to Bhikkhunis stating the word “Bhikkhuni” after their names, granting full recognition of the Bhikkhuni status without any hindrance, as evidenced by the Document marked P4. However, the 2nd Petitioner, later on, became aware that the Department for Registration of Persons included the title “Sil Matha” from time to time, refusing to issue NICs to some Bhikkhunis with the title “Bhikkhuni”, without any rational basis. Aforesaid P4 indicates that even the Department of the 1st Respondent accepted the nomenclature of ‘Bhikkhuni’ sometimes ago. The 1st Petitioner’s contention is based on the violation of right to equality and equal protection of law as contemplated by Article 12(1) of the Constitution. In support of that, she further states

that she had a legitimate expectation based on the previous issuance of the NICs with the nomenclature of ‘Bhikkhuni’. If there is no legal barrier prohibiting the use of the term Bhikkhuni for women who are ordained, and when there is de facto recognition by the members of the society as well as by the Buddhist Chapter she belongs to, and where there was a previous occasions of issuing identity cards with the ‘Bhikkhuni’ nomenclature, it is reasonable and legitimate to expect that she would receive the same treatment for her application. No written Law or Customary law which prohibits the use of the said nomenclature by a Buddhist Nun have been placed before this Court, and, as discussed later in this Judgment, it does not appear that the use of the term ‘Bhikkhuni’ for or by a Buddhist Nun properly ordained is a wrong identified by Law. Thus, there is substance in the argument based on legitimate expectation.

By the application dated 31.05.2013, the 1st Petitioner applied for a NIC to be issued with her status being recognized as a “Bhikkhuni” through the Administrative Officer of Dambulla Divisional Secretariat. The said application accompanied the said officers letter dated 03.06.2013, and the supporting documents to verify her identity – vide P5(a) to P5(f). The aforesaid application was rejected by the 1st Respondent and the Department for Registration of Persons. It must be noted that even the 2nd Petitioner, who is the head and Mahanayake of Rangiri Dambulu Chapter, wrote to the 1st Respondent, by his letter dated 03.06.2013, certifying that the 1st Petitioner is a Bhikkhuni under the Rangiri Dambulu Chapter. He has especially emphasized that Bhikkhunis do not fall within the scope of the functions of the 2nd Respondent, and all matters related to Bhikkhunis are done by the said Rangiri Dambullu Chapter which has been recognized by the Government. - vide P6.

The Petitioners state that the Department for Registration of Persons had informally informed the Petitioners, that a NIC with the status “Bhikkhuni” cannot be issued but is only able to issue a NIC bearing the word “Sil Matha”. The 1st Petitioner refused the said offer to obtain a NIC with the words “Sil Matha”. The Petitioners state that the Bhikkhunis faced immense hardship due to the refusal of issuing NICs with the said nomenclature “Bhikkhuni”.

The Petitioners allege that the said refusal to issue a NIC with the status mentioned as “Bhikkhuni” to the 1st Petitioner is unjust, arbitrary, and capricious, and is also a violation of her right to equality and equal treatment before law guaranteed by Article 12(1) of the Constitution.

As such, the Petitioners state that the said Bhikkhunis, being citizens of Sri Lanka, who are formal Upasampanna members of the Rangiri Dambulu Sangha Sabha, are entitled to be treated in a fair and equal manner in terms of the law, and must not be deprived of having their NIC issued recognizing their status as “Bhikkhuni”, in an arbitrary and illegal manner.

Now it is necessary to look at the response of the Respondents to the allegations made by the Petitioners. In their written submissions, on behalf of the Respondents, it stated that the question before Court goes beyond a question of mere "registration" and it necessarily involves a more fundamental question as to whether the Bhikkhuni tradition, at present, exist in Sri Lanka. It is also stated that this is a purely ecclesiastical matter. It is true that what is before Court is not with regard to the registration of Bhikkhunis. Registration became a concern for the argument as the 1st Respondent required proof of registration as per the 1R1 internal circular of his department, which he states is a policy decision. However, whether it is correct to adopt a policy to seek proof of registration from a place which does not register Bhikkhunis is a matter of concern as such policy will eventually deny the issuance of NICs with nomenclature “Bhikkhuni” as no one can get a proof of registration from a place where such registration of Bhikkhunis is not done. On the other hand, whether the Bhikkhuni tradition, at present, exists is a matter that has to be decided based on the facts and is not an ecclesiastical matter for religious authority to decide. However, whether it should be allowed may be an ecclesiastical matter. Anyhow, as explained above, the Mahanayake Theros of the main three Nikayas have not taken any steps to take any disciplinary measures regarding the affairs of the Rangiri Dambulu Chapter regarding this establishment of Bhikkhuni Sasanaya even though the Respondents attempts to indicate that the said Mahanayake Theros are the final arbiters of such matters and to whose discipline a Buddhist Monk is subject. Their non-action itself shows that the Rangiri Dambulu Chapter has some independence over its affairs and issues related to this case at hand.

It is also contended, on behalf of the Respondent, that one cannot claim a right to be ordained if the religious hierarchy does not recognize such ordainment and it extends beyond a right to "having" or "adopting" a religion, which pertain to **the practice of religion**. It is further contended that Ordainment and the ensuing "membership" of a clergy are subject to certain religious conditions, rules and considerations and is a decision to be taken by the competent religious authorities. In that context, it is argued that matters pertaining to Ordainment and the Rules applicable thereto are not questions of the general law but within the expertise and

province of religious leaders. In this regard, this Court observe that Mahanayake of the Rangiri Dambulu Chapter is the 2nd Petitioner, and he seems to be the religious leader of the said Chapter. It appears that it was he and his Sanga Saba that has taken the decision to ordain Bhikkhunis. As said before, if it was wrongful and if that falls within the disciplinary control of the Mahanayake of the main three Nikayas, they should have taken such measures. It must be said that, as per **Article 14 (1) (e) of the Constitution, every citizen is entitled to the freedom of either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.** If the Mahanayake Theros of the main three Nikayas had disciplinary control, as said before, they should have exercised it over the 2nd Petitioner and the members of the Rangiri Dambulu Chapter who took steps to ordain females. Inaction in that regard from 1998 to the date of the application, which happened 15 years after on 18.06.2013, itself indicate that the 2nd Petitioner and the Rangiri Dambulu Chapter had the freedom to do that. As such, without taking any disciplinary measures (if it can be taken), advising a public officer discouraging the issuance of NICs containing the status “Bhikkhuni” will affect the aforesaid right to practice religion of the Petitioners and the members of the Rangiri Dambulu Chapter as such practice recognizes the ordainment of women as Bhikkhunis, and the 1st Respondent’s action of denying the issuance of NIC recognizing ‘Bhikkhunis’ cause discrimination as it takes sides with the views of the leaders of certain Chapters against the Rangiri Dambulu Chapter.

As stated above, there is de facto existence of the Bhikkhuni Sasanaya from 1998, accepted by considerable number of members of Rangiri Dambulu Chapter which may have considerable number of laity obtaining religious service through them. The purpose of obtaining confirmation of particulars to be entered into the NIC is to ensure that such an Identity Card contains correct information. The correct information is that the 1st Petitioner is a Bhikkhuni under the said Rangiri Dambulu Chapter. It is true that this Court should not go into decide ecclesiastical matters that should be decided by the relevant religious authorities, but this Court has to decide, on the facts available, whether the true identity of the 1st Petitioner was denied and tried to be replaced with that of a ‘Sil Matha’. As indicated above, facts show the de facto existence of Bhikkhuni Sasanaya from 1998, for about 15 years at the time of filing this application. It may be true that all the 32 Chapters or Parshawa referred to by the Petitioners and indicated in 2R5 are affiliated to main three Nikayas; thus, the Rangiri Dambulu Chapter to Siyam or Siaymopali Nikaya. If, in the ecclesiastical arrangement, any of the main Nikayas has any disciplinary power over the Rangiri Dambulu Chapter, such power should have been

used while giving an opportunity to the Rangiri Dambulu Chapter to place their case before such ecclesiastical arrangements to solve the issue pertaining to the ordainment of Buddhist Nuns. There is no evidence placed before Court to show that such a measure was taken. This indicates that either there is no such power over the Rangiri Dambulu Chapter with the main Nikayas to which it is affiliated, or no such disciplinary powers were exercised letting the ordainment of Buddhist Nuns to be taken place for many years giving legitimate expectations for female followers attached to Rangiri Dambullu Chapter regarding their ordainment as Bhikkhunis. Hence, in my view, without taking disciplinary measures if it can be done, any attempt, by any religious leadership of any other chapters or Nikayas in an indirect manner, to deny the identity of any Bhikkhuni as Bhikkhuni affects the right to practice their religion of the members of Rangiri Dambulu Chapter. The 1st Respondent taking side with such an attempt in the guise of advice taken involve in discrimination as he takes side with one or more chapters against another.

The Respondents allege that the Petitioners have not disclosed all relevant material facts, and the application of the Petitioners are misconceived in law. In this regard, the Respondents have brought this Court's attention to the opinion expressed by Mahanayake Theros of the Malwathu, Asgiri, Amarapura and Ramanna Nikayas that the Bhikkhuni Sasana cannot be revived in Sri Lanka, where a great majority follow Theravada Buddhism. This is only an opinion of some sectors. It is clear that there are different opinions which encourage the establishment of Bhikkhuni Sasana. This is not a matter to be decided by Court. As said before, if the Rangiri Dambullu Chapter had committed a wrongful act by reviving Bhikkhuni Sasanaya, if the Mahanayake Theros of the main three Nikayas have any disciplinary measures over that act, it should be exercised while giving an opportunity for the members of that Rangiri Dambulu Chapter, especially the 2nd Petitioner to place his case and decide. Otherwise, as explained above, the Petitioners have their right to practice their religion, which includes the ordainment of female members of the congregation. As said before, inaction shown in that regard, give more weight to accept the view placed by the Petitioners that each chapter is independent of the others.

While making reference to certain communication that took place between Mahanayake Theros of the main Nikayas, namely the letters marked 2R1, 2R2, 2R3, 2R4 and 2R5, the Respondents have drawn this Court's attention to Article 9 of the Constitution which mandates the State to protect and foster the Buddha Sasana. The said Mahanayake Theros may have expressed their

opinion that establishing a Bhikkhuni Sasana is not for the betterment of the Buddhism. Thus, the 1st Respondent appears to take shelter against the allegation of violation of Fundamental Rights by indicating that he had to refuse the NIC with the nomenclature “Bhikkhuni” to protect Buddhism. However, as said before, the Communications contains the opinions of the Mahanayake Theros who wrote them. As said before, if the establishment of Bhikkhuni Sasanaya is harmful and against the precepts of Buddha Sasanaya existing in Sri Lanka, relevant Mahanayake Theros should have opted to take disciplinary measures against the members of the Rangiri Dambulu Chapter, if they have such authority to use such disciplinary measures, or else, all the Chapters must reach a consensus through a gathering represented by those Chapters as to whether any harm would be caused by ordainment of females. Without such consensus or the result of such a disciplinary measure taken, the 1st Respondent taking sides of an opinion of some will discriminate against those who bear a different opinion. In the case at hand, it is against the Petitioners and practice of their religion.

Admittedly, the Department for Registration of Persons has in the past, prior to obtaining the clarification of the Mahanayaka Theros, had issued NICs with the nomenclature 'Sthawira', 'Himi' or 'Bhikkhuni'. It is pointed out by the Respondents that the holders of such identity cards have not been made parties to this application. As this application is not to challenge the issuance of those Identity Cards, there is no necessity to make them parties. The Petitioners have complained of their grievance that caused the alleged violation and pointed out who is responsible for it. Thus, I do not see that the application is misconceived or concealing relevant material facts. Once the allegation is made revealing the relevant material facts establishing the violation of rights, it is for the Respondent to show that there is no violation.

The Respondents contend that, as per Section 41 of the Buddhist Temporalities Ordinance, it requires all Upasampada Bhikkhus and Samaneras to be mandatorily registered, and as such, when inquiries are made by the Department for the Registration of Persons about Upasampada Bhikkhus and Samaneras, such information is duly made available. However, they further contend that the said Ordinance does not contain any provisions regarding the registration of 'Bhikkhunis' or 'Mehenis'. Therefore, when applicants for NICs requested for letters confirming their status as 'Mehenis', it was informed that 'Mehenis' are not registered under the said Ordinance.

In this regard, the Petitioners has brought this Court's attention to Section 2(II) of the Interpretation Ordinance and Sections 2 and 41 of the Buddhist Temporalities Ordinance, as well as to **Britto Mutunayagam v Hewavitarane** reported in 51 N L R 237.

As per Section 2(II) of the Interpretation Ordinance, words importing the masculine gender shall be taken to include females. Thus, the contention of the Petitioners is that the interpretation given in the Section 2 of the Buddhist Temporalities Ordinance to state that "*bhikkhu*" means a *bhikkhu*, whether *upasampada* or *samanera* has to be interpreted to include bhikkhunīs, and accordingly, as a result, Registers contemplated in Section 41 have to be maintained even for the Bhikkhunīs. Thus, the Petitioners argues that the 2nd Respondent cannot evade the obligation of maintaining a Register for Bhikkhunīs.

However, the position of the Petitioners differs. The Petitioners argue that when there is something repugnant in the subject or context, the words importing the masculine gender shall not be taken to include females. The Petitioners also argue that the words "Bhikkhu" and "Bhikkhuni" are not interchangeable as they are distinct and different. In this regard, quoting from "**A Manual of Bhuddism**" by venerable Narada Maha Thera, published by the Buddhist Missionary Society, Buddhist Vihara, Malasia, and "**Buddhism: a modern perspective**" by Charles S Prebish, Sri Satguru Publications, Delhi, India, 1995, the learned DSG has indicated that the Bhikkhuni Sasana was allowed by Lord Buddha, after refusing to allow it several occasions, only on the condition to follow eight chief rules. She also points out that the number of rules and offences related to Buddhist Monks and Buddhist Nuns differ according to various texts. Thus, the learned DSG has argued there is a distinct difference between the roles and obligations of Bhikkhus and Bhikkhunīs and those two words are not interchangeable. In other words, her argument was that the 'Bhikkhuni' is not the female counterpart of the word 'Bhikkhu' which refers to male Buddhist monks. Anyhow, what has been quoted by the learned DSG indicates that Bhikkhuni Sasana was allowed even by the Lord Buddha, after some reluctance, and thus, it is not itself something repugnant to Buddhism.

However, for the reasons discussed below, I do not think it is necessary to decide whether the word Bhikkhuni is the female counterpart of the word Bhikkhu, or whether it can be interchangeably used in application of the provisions of Buddhist Temporalities Ordinance as the 1st Petitioner's liability regarding the violation can be established without deciding that.

It should be noted that whichever the way it is decided, it will not relieve the 1st Respondent and / or 2nd Respondent from the fault on their side. For example, if one accepts the position of the Petitioners, not taking steps to maintain register for Bhikkhunis falls on the shoulders of the 2nd Respondent, while the 1st Respondent would be at fault for relying on a department which does not fulfill what is required by law in refusing the 1st Petitioner's rights. On the other hand, if it is decided in favour of the Respondents' stance that those two words are not interchangeable, the 1st Respondent is at fault for drafting, maintaining and using the circular marked 1R1 in a manner to affect the applications of Bhikkhunis when such details are not registered with the 2nd Respondent or his department, which is a fact that was brought to his notice by the 2nd Petitioner by his letter dated 03.06.2013 marked P6. Denying the issuance of the NIC based on the Petitioners failure to or the 1st Respondent's inability to get the registration of ordainment as a Bhikkhuni verified from the 2nd Respondent's Department, as evinced by the 2 R 8, is illogical and arbitrary, as it requires a confirmation of a thing from a department where no resource is available in that regard. In other words, the 1st Respondent was requiring a verification from a place where such registrations do not take place according to their own stance, to issue the NIC with the nomenclature Bhikkhuni. As per the stance of the Respondents as explained above, Bhikkhunis registration is not contemplated in the Buddhist Temporalities Ordinance, but by requiring such a certificate from the relevant Department for the issuance of NIC with the Bhikkhuni status mentioned therein, the 1st Respondent has totally shut down the right of the 1st Petitioner to apply for an NIC with such nomenclature. In this regard, on behalf of the 1st Petitioner, this Court's attention has been brought to Section 39 A (1) of the Registration of Persons (Amendment) Act No. 8 of 2016 and Section 39(1) of the Registration of persons Act No.32 of 1968 that prevails at the time relevant to show that the law enables him to direct the relevant authority or a person to furnish information available with such Authority or person. If the Department of Buddhist Affairs, as per their own stance, does not record or bound to record information regarding Bhikkhunis, how could it or any of its officers be a proper authority or a person to get such information verified. By tendering P5b to P5d with the application, P5a, the 1st Petitioner has given information to the 1st Respondent and, through letter P6, the 2nd Petitioner had indicated from where the details can be verified.

One may argue whether the Bhikkhunis and Bhikkhus are of a same kind and represents the opposite gender of the same is a matter to be decided by an ecclesiastical body and not by Courts as it relates to religious functions performed by them. However, even if they are of a different kind, it does not vitiate the fact that when a Buddhist Bhikkhu, who is revered by the

Society, applies for a NIC his status as Bhikkhu is accepted and included in the said Identity Card, but when a female, even if she is supposed not belong to the same kind as of a Bhikkhu, but is revered as a Bhikkhuni, applies for a NIC, her status is not accepted to include in the Identity Card. It appears that what was suggested to be done was to include ‘Sil Matha’, which may not give the same identity as a Bhikkhuni thereby causing an identity issue as to the status. This appears to be a result of the applicant being a female.

Further, it is argued that as the Buddhist Temporalities Ordinance does not recognize Bhikkhunis, Bhikkhunis are not identified by law, and therefore, the 1st Petitioner is not entitled to get her status “Bhikkhuni” mentioned in the NIC. First, it must be observed that the purpose of enacting the Buddhist Temporalities Ordinance was to amend and consolidate the law relating to Buddhist Temporalities in Sri Lanka. Registering Bhikkhus and Samaneras are corollary to that purpose. On the other hand, the 1st Respondent does not explain how he gets Reverends from other religions verified to include their title. Is there any law getting all Clergy and Reverends registered to recognize them by law as such? If not, is there any logical reason for looking for registration of Bhikkhuni through a provision of law to recognize it to be included in the NIC.

The Respondent has referred to **Keselwatugoda Chandana Thero v Rev. Srimawatte Ananda Mahanayaka Thero** (1996) 2 Sri LR 287 to indicate that ecclesiastical matters should be left to be decided by the relevant ecclesiastical authorities and not by courts, and it is the Maha Sanga Saba and Mahanayake well versed with Vinaya Pitakaya who are the best judges in that regard. However, this does not show that the Mahanayaka of the main three Nikayas have authority over other Nikayas or Chapters. The 2nd Petitioner is the Mahanayake of his Rangiri Dambulu Chapter and the head of Rangiri Dambulu Maha Sanga Sabah. If the Mahanayaka Thero’s of main three Nikayas had any authority over the Rangiri Dambulu Chapter, they would have used it from 1998 to stop the ordination of women. Thus, it is apparent that it is the 2nd Petitioner who had the authority to decide the religious practice of his Chapter and the 1st Petitioner should have inquired from him as to the verification of information provided in the 1st Petitioner’s application.

What is discussed above elucidates the followings;

- The 1st Petitioner is a female member of the Rangiri Dambulu Chapter of which the Mahanayake Thero is the 2nd Petitioner.
- The 1st Petitioner has been ordained as a Bhikkhuni by the said Chapter, where she was awaiting the opportunity to receive the higher Ordination of Upasampanna Bhikkhuni at the time of this application to this Court.
- Bhikkhuni Sasanaya existed at the time of Lord Buddha, and also in Sri Lanka in the past, but lost its presence during the Polonnaruwa Kingdom, but the said Rangiri Dambulu Chapter revived it in 1998.
- If the said revival was against the discipline, and if there is any authority, which or who may have disciplinary power over the 2nd Petitioner or his Rangiri Dambulu Chapter, there was sufficient time till 2013, almost 15 years, to take necessary disciplinary measures regarding such revival. Inaction of any other authority in that regard indicates that it is the 2nd Petitioner, Mahanayake of Rangiri Dambulu Chapter and Rangiri Dambulu Maha Sangasaba, that has authority to decide religious practices that the said Chapter shall follow or exercise.
- As per the religious practices followed by the said Rangiri Dambulu Chapter, the 1st Petitioner has been ordained as a Bhikkhuni, and the 1st Petitioner and the 2nd Petitioner, as members of the said Chapter, have a right to engage in such religious practices in terms of Article 14(1)(e) of the Constitution as far as those practices do not fall within the restrictions found under the relevant subsections of Article 15 [namely 15(4) and 15(8)].
- Existence of such restriction has not been established before this Court.
- In furtherance of those religious practices of the Rangiri Dambulu Chapter, the 1st Petitioner has been ordained as a Bhikkhuni and she has a right to engage in such religious practices along with others as a Bhikkhuni of the Rangiri Dambulu Chapter. The said Chapter has a considerable number of Bhikkhunis, including Samanera Bhikkhunis, which exceeds 3000 in number. Thus, there is a de facto Bhikkhuni Sasanaya from 1998.

- Thus, the 1st Petitioner has a right to be identified as a Bhikkhuni of that Chapter.
- The 1st Respondent without getting the necessary information verified by the proper authority, namely the 2nd Petitioner, has refused to name her as a Bhikkhuni in her NIC and issue it. He has sought a verification by establishing a registration done in the Department of Buddhist Affairs where no such registration has taken place, and, as per their own stance, no such provision exists, making it an inevitable denial of an NIC with the nomenclature of Bhikkhuni.
- The 1st Respondent has also formulated a circular making it necessary to verify from the Department of Buddhist Affairs, which maintain records in terms of the Buddhist Temporalities Ordinance, when, as per their own stance, registration under said Ordinance does not cover registration of Bhikkhunis, and thus, knowing well that it will deprive the female Buddhist Nuns from getting their status as a “Bhikkhuni” in their NIC. The 1st Respondent also acted in accordance with the opinions of other Mahanayaka Theros who apparently have no authority over the Rangiri Dambulu Chapter (if they had, they should have used that power during the 15 years the said practice of ordaining women existed), whose opinion was that Bhikkhunis have no place in Sri Lanka. Thus, the 1st Respondent also took side with one opinion against the practices of the religion by the Rangiri Dambulu Chapter thereby causing discrimination against the Rangiri Dambulu Chapter where the 1st Petitioner is a member.
- It is obvious that if the 1st Petitioner was a male, she would not have faced these difficulties. She had been deprived being recognized as a Bhikkhuni when in fact, she is a Bhikkhuni as per the Rangiri Dambulu Buddhist Chapter which she belonged to and is recognized by the Government.
- Hence, it is clear that her rights protected under Article 12(1) of the Constitution has been violated by the acts and conduct of the 1st Respondent.

The learned Counsel for the Petitioners has brought this Court’s attention to the cases of **Madawatte Kammale Samel Sirisena v Madawatte Kammale Matheshamy** SC/ Appeal/82/2010 decided on 13.11.2023 and **Wijerathne v Sri Lanka Ports Authority** SC FR

256/17, decided on 11.12.2020, where Hon. Justice Samayawardhena and Hon. Justice Kodagoda respectively express their opinion of the importance of the concept of equality and right to equality as a fundamental right. This Court, without hesitation, can endorse those views.

For the reasons given above, this Court declares that the Petitioners rights guaranteed under Article 12(1) of the Constitution has been infringed by the 1st Respondent. Thus, this Court directs the 1st Respondent to issue her National Identity Card recognizing her status as a Bhikkhuni.

Application allowed with Costs.

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Judge of the Supreme Court

Hon. Murdu N. B. Fernando, PC., CJ

I agree

.....

The Chief Justice

Samayawardhena, J.

I have had the advantage of reading the draft judgment prepared by Justice Amarasekara. However, I regret that I am unable to agree with my brother.

In the post-argument written submissions, the learned President's Counsel for the petitioners has identified the issue for determination by this Court as follows:

The key issue for Your Lordships to address in this matter is whether the 1st petitioner, as a Bhikkuni, is entitled to receive a National Identity Card which correctly recognizes her status for what it is [i.e. as a Bhikkhuni] and whether by the arbitrary and illegal

actions of the respondents the fundamental right to equality under Article 12 has been infringed.

The 1st petitioner is a *bhikkhuni* who made an application to the 1st respondent, the Commissioner General of the Department of Registration of Persons, seeking an amendment to her National Identity Card to reflect her status as a *bhikkhuni*. The 2nd petitioner is the Mahanayaka Thero of the Rangiri Dambulla Chapter of the Siyam Maha Nikaya. The 2nd respondent is the Commissioner General of the Department of Buddhist Affairs.

Upon receiving the application from the 1st petitioner, the 1st respondent verified the information regarding the 1st petitioner's status through the 2nd respondent as the matter related to a question within the domain of Buddhist religious administration. This verification was carried out in compliance with sections 39 and 39A of the Registration of Persons Act and is not contrary to law.

39(1) The Commissioner, or any other authorized officer,

(a) may direct any person to furnish, within such period as shall be specified in the direction, the Commissioner or such other officer with such information within his knowledge as shall be so specified relating to any other person referred to in the direction, being information which is necessary for the following purposes, namely, the disposal of any application made by such other person under this Act, or for the verification of the correctness of any particulars specified in any such application, or of any return or information made or furnished by such other person under this Act; and

(b) may, from time to time, hold all such inquiries as he may deem necessary for any of such purposes.

(2) For the purposes of any inquiry held under subsection (1), the Commissioner or any other authorized officer, shall have all the powers of a District Court

(a) to summon and compel the attendance of witnesses;

(b) to compel the production of documents; and

(c) to administer any oath or affirmation to witnesses.

(3) Section 142 of the Civil Procedure Code and section 132 of the Evidence Ordinance shall apply to a witness in any proceedings at any inquiry held under subsection (1) as though those proceedings were proceedings before a civil court.

39A(1) The Commissioner General or an authorized officer may, for the purpose of discharging the functions under this Act, require a prescribed authority to furnish, in writing, such prescribed information relating to a person, recorded with such Authority.

(2) It shall be the duty of the person who is in charge of such authority referred to in subsection (1) to comply with such requirement.

(3) The information transmitted under subsection (2) shall be used only for the purposes of this Act.

According to the Buddhist Temporalities Ordinance, it is “*an Ordinance to amend and consolidate the law relating to Buddhist temporalities in Sri Lanka*”, and it expressly provides that “*the provisions of this Ordinance shall apply to every temple in Sri Lanka*”. The interpretation section of the Ordinance defines the term “temple” as “*vihare, dagoba, dewale, kovila, avasa, or any place of Buddhist worship, and includes the Dalada Maligawa, the Sripadasthana, and the Atamasthana of Anuradhapura*”. The term “*bhikkhu*” is defined as “*a bhikkhu, whether Upasampada or Samanera,*” and the Ordinance makes no reference to *bhikkhunis* (female monks).

In these circumstances, the 2nd respondent has sought clarification from the Mahanayake Theros of the three Maha Nikayas: the Siyam Maha Nikaya (comprising the Malwathu and Asgiri Chapters), the Amarapura Maha Nikaya, and the Ramanna Maha Nikaya.

I do not consider the procedure adopted by the 1st and 2nd respondents to be contrary to law or established practice.

The Golden Temple of Dambulla, which is also known as the Rangiri Dambulu Viharaya, where the 2nd petitioner serves as the Chief Incumbent, is a “place of Buddhist worship” and therefore falls within the definition of “temple” under the Buddhist Temporalities Ordinance.

The responses of the Mahanayake Theros of the three main Nikayas indicate that the respondents should not recognise the status of *bhikkhuni*, as it is contrary to Buddhist Law

“බුද්ධ නීතිය (විනය)”. *Vide* documents filed by the respondents, including 2R1–2R7, 2R9, 2R10, and 2R10A.

In contrast, the petitioners have filed documents asserting that the recognition of *bhikkhunis* is not inconsistent with Buddhist Law. *Vide* documents filed by the petitioners including P9, P10, and P11.

The petitioners have also submitted letters from Chief Priests of certain Chapters belonging to the aforementioned Maha Nikayas, stating that they have no objection to the issuance of National Identity Cards recognising the status “*bhikkhuni*”, primarily to facilitate attendance at examinations conducted by the Department of Examinations.

If the position taken by the Mahanayake Theros of the Malwathu, Asgiri, Amarapura, and Ramanna Nikayas—that the *bhikkhuni sasanaya* does not exist in Sri Lanka—is accepted, then the use of the term *bhikkhuni* in National Identity Cards by the 1st respondent would be false, misleading and contrary to the provisions of the Registration of Persons Act.

It is of significance that the 2nd petitioner, who maintains that the *bhikkhuni sasanaya* is not contrary to Buddhist Law, is the Mahanayaka of the Rangiri Dambulla Chapter of the Siyam Maha Nikaya. However, as previously stated, the Mahanayake Theros of the Malwathu and Asgiri Chapters of the Siyam Maha Nikaya have unequivocally taken a contrary position.

In this backdrop, can the 1st respondent disregard the views of the Mahanayake Theros of the Malwathu and Asgiri Chapters of the Siyam Maha Nikaya, as well as those of the Amarapura and Ramanna Nikayas, and act on the view of the 2nd petitioner to issue National Identity Cards recognising the status of “*bhikkhuni*”? I do not think he can. To do so would lead to a crisis situation, alleging unwarranted intrusion by State officials into matters of religious doctrine, which fall outside not only the proper domain of executive authority but also the judicial province of this Court. The question of whether *bhikkhunis* should be recognised in Buddhist Law is not a matter for this Court to decide through a fundamental right application.

Article 16(1) found in the Fundamental Rights Chapter of the Constitution states:

All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter.

In paragraphs 6 and 9 of the petition, the petitioners state that the *bhikkhuni sasanaya* was re-established in Sri Lanka after nearly 900 years on 12.03.1998, when the Rangiri Dambulla Sangha Sabha, presided over by the 2nd petitioner, ordained 22 novice *bhikkhunis* as *upasampada bhikkhunis* through the performance of *upasampadha vinaya karma*. The petitioners further state that no objections have been raised regarding this event to date, and that a number of similar rituals have since been conducted regularly.

By examining the documents tendered by the respondents which I mentioned previously, it is not correct to state that the Mahanayaka Theros of Maha Nikayas did not object to the recognition of *bhikkhuni sasanaya* in Sri Lanka. They have made strong objections to the 2nd respondent and the Head of State against any recognition by the State of *bhikkhuni sasanaya* reminding them of Article 9 of the Constitution, which, as it stands at present, reads as follows:

The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e).

The firm standpoint taken by the Mahanayaka Theros of the Malwathu, Asgiri, Amarapura, and Ramanna Nikayas is that, in order to protect and foster the Buddha Sasana, the *bhikkhuni sasanaya* should not be recognised by the State. To underscore this position, I shall quote only a portion of one document—namely, the second paragraph of document 2R4—which was sent by the Mahanayaka Thero of the Siyam Maha Nikaya (Malwathu Chapter) to the 2nd respondent, just sixteen days prior to the institution of this case.

අදටත් පිරිසිදු ථෙරවාදී බුදු දහම නොනැසී පවත්නා ප්‍රමුඛ රාජ්‍යයක් වශයෙන් ප්‍රකට ශ්‍රී ලංකා දේවපිය තුළ ශ්‍රී සම්බුද්ධ ශාසනයේ හා ධර්ම විනයේ පරිභාණියට ඒකාන්තයෙන්ම හේතු වියහැක්කා වූ භික්ෂුණි ශාසනයක් යළි ස්ථාපනය කිරීමට ගන්නා කිසිදු ක්‍රියාමාර්ගයකට එකඟ විය නොහැකි බවටත්, එම ක්‍රියාදාමය ප්‍රඥා ගෝචර ක්‍රියාවක් නොවන වගටත් ත්‍රෛතිකායික මහානායක මාහිමිපාණන්වහන්සේලා මීට පෙර අවධාරණයෙන් ඔබ වෙත දන්වා ඇත. එසේ තිබිය දී නැවත වරක්, ගැටුම්කාරී විවාදයකට පෙළඹෙන ආකාරයෙන්, දෙපාර්ශවයක් කැඳවා සම්මන්ත්‍රණයක් පැවැත්වීමට ක්‍රියා කිරීම හෝ මෙම ක්‍රියාමාර්ගයට රාජ්‍ය මැදිහත් වීමක් ලබා දීම හෝ කිසිසේත් අනුමත කළ හැක්කක් නොවන වග අවධාරණය කොට දන්වා සිටිමිනි.

There is no need to physically go to the place of ordination and protest, as, according to paragraph 9 of the petition, a third party cannot object to such ordination.

The petitioners state that the Bhikkuni Upasampadha Vinaya Karma was performed by a unanimous decision of the Rangiri Dambulu Sangha Sabhawa and according to the practice and the law of Vinaya Karma, only members of the said Rangiri Dambulu Sangha Sabhawa who is present at such a Vinaya Karma can object to such an ordainment.

In any event, it is not the practice to physically go there and protest, especially for Mahanayaka Theros, as such reactions often end in violence. What was conveyed by the Mahanayaka Thero of the Amarapura Maha Nikaya to the 2nd respondent in letter 2R3, sent less than two months prior to the filing of this case, is far-sighted: “එහෙයින් ඔබ විසින් යෝජිත එවැනි සම්මන්ත්‍රණයක් සිදුකළහොත් සමගිව රැස්ව සමගිව විසිර යාමක් කෙසේවත් සිදු නොවන අතර සංඝයා හේද හින්න වීමක් සිදු වී අනාගාමිකයන්ගේ ද උපහාසයට ලක්වීමට ඉඩ තිබේ.”

My brother, while not accepting that the issue before this Court is an ecclesiastical matter, correctly concedes that “*this Court should not go into decide ecclesiastical matters that should be decided by the relevant religious authorities*”. With respect, in my view, this is an ecclesiastical matter. No violation of fundamental right guaranteed by Article 12(1) has been committed either by the 1st respondent or the 2nd respondent. The petitioners’ action must stand dismissed.

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Judge of the Supreme Court