

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

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

- 1. Karasinghe Arachchillage Ruwan
Lasantha Deshapriya,
Illumbakanda, Rakwana.**

and 27 others

PETITIONERS

SC / FR / 372 / 2019

-Vs-

- 1. The Institute of Valuers of Sri Lanka
alias, “Corporation” of the Institute of
Valuers,
Room No. 05, 2nd Floor,
OPA Professional Centre,
No. 275/75,
Stanley Wijesundara Mawatha,
Colombo 07.**

and 17 others

RESPONDENTS

Before: E.A.G.R. Amarasekara, J,
A.H.M.D. Nawaz, J &
Janak De Silva, J

Counsel: Chandana Wijesooriya for the Petitioners.

Rajeev Amarasuriya with Anne Devananda for the 1st, 2nd, 3rd and 5th
Respondents.

M.U.M Ali Sabry, PC with Ruwantha Cooray for the 4th and 6th – 13th
Respondents.

Argued on: 02.12.2021

Decided on: 16.06.2025

A.H.M.D. Nawaz, J.

1. The Petitioners in this case who are members of the 1st Respondent institute of Valuers made applications for enrollment as Fellow members of the 1st Respondent in terms of Section 17 (1) (b) of the Institute of Valuers of Sri Lanka Law No.33 of 1975. The applications of the Petitioners to have themselves enrolled as Fellow members had not been allowed when the Petitioners invoked the jurisdiction of this court under Article 126 of the Constitution and in fact one of the remedies sought by the Petitioners is a direction sought by the Petitioners to have them enrolled as Fellow members of the 1st Respondent institute namely Institute of Valuers of Sri Lanka. The Petitioners also seek a declaration that their fundamental rights guaranteed under Article 12 (1) of the Constitution have been infringed or have been continuously infringed.
2. When this application was taken up for argument the learned counsel for the 1st Respondent raised the following preliminary objections to the maintainability of this application. The aforesaid objections are to the following effect;

- The acts and deeds of the Institute complained of cannot be construed to be executive or administrative action.
- The Petitioners have not come within the required 01 month period and this application is time barred.
- The 6th Respondent was part of the decision making process and has acquiesced in the matters now sought to be impugned and now cannot be heard most belatedly to object to the same.
- Necessary party Respondents have not been named nor were they before Court and on this basis as well, this case must be dismissed in *limine*.
- The relief sought was misconceived as there were no prayers in the first instance declaring that the Petitioners were eligible to be enrolled as Fellow members. In this respect, the submission was that without a declaration of this nature, the Petitioners cannot be entitled to any other consequential relief.

3. Before I proceed to answer the preliminary objections that have been raised Articles 17 and 126 of the Constitution could best be juxtaposed for clarity.

4. Article 17 provides that: -

*"Every person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement by **executive or administrative action**, of a fundamental right to which such person is entitled under the provisions of this Chapter."*

5. Article 126 (1) and (2) of the Constitution provides that : -

*(1) The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by **executive or administrative action** of any fundamental right or language right declared and recognized by Chapter III or Chapter IV.*

(2) 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 petition in writing addressed to such Court praying for relief or redress in respect of such infringement. Such application may be proceeded with only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused, as the case may be, by not less than two judges".*

6. It must be stated that the words “**executive or administrative action**” used in Articles 17 and 126 remain among “the great generalities of the Constitution” the content of which has been and continues to be supplied by this court from time to time. The various Articles in chapter III have placed responsibilities and obligations on the “State” vis-a-vis the individual to ensure constitutional protection of the individual’s rights against the State, including the right to equality under Article 12 and most importantly, the enforce all or any of these fundamental rights against the “State” as described as “**executive or administrative action**” in Articles 17 and 126 (2) of the Constitution.
7. The scope and range of Article 12 have been widened by a process of judicial interpretation so that the right to equality now not only means the right not to be discriminated against but also protection against any arbitrary or irrational action or inaction.
8. Keeping abreast of this broad approach to the concept of equality under Article 12, courts have, whenever possible, sought to curb an arbitrary exercise of power against individuals by “centres of power”, and there was correspondingly an expansion in the judicial definition of “executive or administrative action”.
9. It is not irrelevant to recall that a stage was reached in this country when the definition of “executive or administrative action” came to be understood with reference to the remedies available against such action. Thus, a statutory

corporation pursuant to statutory powers was considered a “State”, and public duty was limited to those which were created by statute.

10. The decision of the Constitution Bench of the Indian Supreme Court in ***Rajasthan State Electricity Board v. Mohanlal***¹ is illustrative of this approach. The question there was whether the Electricity Board - which was a corporation under a statute primarily for the purpose of carrying on commercial activities could come within the definition of “State” in Article 12 of the Indian Constitution. After considering earlier decisions, it was said : (AIR p.1863, para 6)

“These decisions of the Court support our view that the expression “other authorities” in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers may be for the purpose of carrying on commercial activities.”

11. This decision further stated that if any corporation has authority to issue directions, the disobedience of which would be punishable as a criminal offence, that would be an indication that the corporation is “State”.

12. In ***Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi***² The question arose whether the Oil and Natural Gas Commission, the Industrial Finance Corporation and the Life Insurance Corporation are "authorities" within the meaning of Article 12. The case was decided by a majority of 4:1. A.N. Ray, C.J., speaking for himself and on behalf of Y.V. Chandrachud and A.C. Gupta, JJ. held that all the three were statutory corporations i.e. given birth by statutes. The circumstance that these statutory bodies were required to carry on some activities of the nature of trade or commerce did not make any difference. The Life Insurance Corporation is (i) an agency of the Government, (ii) carrying on the

¹ AIR 1967 SC 1857 ; (1967) 3 SCR 377

² (1975) 1 SCC 421 ; (1975) SCC (I&S) 101 : (1975) 3 SCR 619

exclusive business of life insurance (i.e. in monopoly), and (iii) each and every provision of the statute creating it showed in no uncertain terms that the Corporation is the voice and the hands of the Central Government. The Industrial Finance Corporation is in effect managed and controlled by the Central Government, citizens cannot be its shareholder. ONGC (i) is owned by the Government, (ii) is a statutory body and not a company, and (iii) has the exclusive privilege of extracting petroleum. Each of the three, respectively under the three Acts under which they are created, enjoy power to do certain acts and to issue directions obstruction in or breach whereof is punishable as an offence. These distinguish them from a mere company incorporated under the Indian Companies Act. The common features of the three are **(i) rules and regulations framed by them have the force of law, (ii) the employees have a statutory status, and (iii) they are entitled to declaration of being in employment when the dismissal or removal is in contravention of statutory provisions.** The learned Chief Justice added, by way of abundant caution, that these provisions did not however make the employees as servants of the Union or the State though the three statutory bodies are authorities within the meaning of Article 12 of the Constitution.

13. Mathew, J recorded his separate concurring opinion in the above case. As to ONGC he hastened to arrive at a conclusion that the Commission was invested with sovereign power of the State and could issue binding directions to owners of land and premises, not to prevent employees of the Commission from entering upon their property if the Commission so directs. Disobedience of its directions is punishable under the relevant provisions of the Indian Penal Code as their employees are deemed to be public servants. Hence the Commission is an authority in terms of the **“executive or administrative action”** which is reflected as State and other authorities specified in Article 12 of the Indian Constitution. At the end Mathew, J made it clear that he was expressing no opinion on the question whether private corporations or other like organizations though they exercise power over their employees which might violate their fundamental rights would be the State within the meaning of Article 12. What is “State action” and how far the concept of “State action” can be expanded, posing the question, Mathew, J answered (SCC p.453, para 95)

“It is against “State action” that fundamental rights are guaranteed. Wrongful individual acts unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings are not prohibited. Articles 17, 23 and 24 postulate that fundamental rights can be violated by private individuals and that the remedy under Article 32 may be available against them. But, by and large, unless an act is sanctioned in some way by the State, the action would not be State action. In other words, until some law is passed or some action is taken through officers or agents of the State, there is no action by the State.”

14. In ***Ramana Dayaram Shetty v. International Airport Authority of India***³, the dispute related to trends within the domain of administrative law. A question arose whether the International Airport Authority of India (IA for short) was within the scope of “other authorities” in Article 12 so as to become amenable to Article 14 of the Indian Constitution - our equivalent of Article 12. P.N. Bhagwati, J. who delivered the judgment in the three Judge Bench stated the ratio of ***Rajasthan SEB case***⁴ in these words; (SCC p. 517, para 27)

“The ratio of this decision may thus be stated to be that a constitutional or statutory authority would be within the meaning of the expression “other authorities”, if it has been invested with statutory power to issue binding directions to third parties, the disobedience of which would entail penal consequence or it has the sovereign power to make rules and regulations having the force of law.”

15. The learned judge then referred to what he termed as a “broader test” laid down by Mathew, J. in ***Sukhdev Singh case***⁵ and said that judgement by Mathew, J. provided “one more test and perhaps a more satisfactory one” for determining whether a statutory corporation, body or other authority falls within the definition of “the State” and the test is –

³ (1979) 3 SCC 489 : AIR 1979 SC 1628

⁴ Supra fn1

⁵ Supra fn 2

“If a statutory corporation, body or other authority is an instrumentality or agency of the Government, it would be an ‘authority’ and therefore ‘State’ within the meaning of that expression in Article 12.” (SCC p.517, para 27)

16. Having minutely examined the provisions of the International Airport Authority Act 1971 he found out the following features of IA : (i) the Chairman and members are *all* persons nominated by the Central Government and the Central Government has power to terminate or remove them ; (ii) the Central Government is vested with the power to take away the management of any airport from IA ; (iii) the Central Government has power to give *binding directions* in writing on questions of policy ; (iv) the capital of IA needed for carrying out its functions is *wholly* provided by the Central Government ; (v) the balance of net *profit* made by IA, after making certain necessary provisions, does not remain with IA and is required to be taken over to the Central Government ; (vi) the financial estimates, expenditure and programme of activities can only be such as approved by the Central Government; (vii) the Audit Accounts and the Audit Report of IA, forwarded to the Central Government, are required to be laid before both Houses of Parliament; (viii) it was a department of the Central Government along with its properties, assets, debts, obligations, liabilities, contracts, cause of action and pending litigation taken over by IA; (ix) IA was charged with carrying out the same functions which were being carried out by the Central Government; (x) the employees and officials of IA are public servants and enjoy immunity for anything done or intended to be done, in good faith, in pursuance of the Act or any rules or regulations made by it ; (xi) IA is given (delegated) *power to legislate* and contravention of certain specified regulations entails penal consequences. Thus, in sum, IA was held to be an instrumentality or agency of the Central Government falling within the definition of the State both on the narrower view propounded in the judgment of A.N. Ray, C.J. and broader view propounded by Mathew, J. in *Sukhdev Singh case*⁶

⁶ supra fn2

17. *Ajay Hasia v. Khalid Mujib Schravardi*⁷ is a Constitution Bench judgment wherein P.N. Bhagwati, J. spoke for the Court. The tests which he had laid down in *Ramana case*⁸ were summarized by him as six in number and as under: (SCC p. 737, para 9)

1. *One thing is clear that if the entire share capital of the corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of the Government.*
2. *Where the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.*
3. *It may also be a relevant factor whether the corporation enjoys monopoly status which is State-conferred or State-protected.*
4. *Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.*
5. *If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.*
6. *'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government.*

The footnote to the tests, as put by him, is: (SCC p. 737, para 9)

"If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government,

⁷ (1981) 1 SCC 722 : 1981 SCC (I & S) 258

⁸ *supra* fn3

it would ..., be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12."

Bhagwati, J. placed a prologue to the above said tests emphasizing the need to use care and caution,

"because while stressing the necessity of a wide meaning to be placed on the expression 'other authorities', it must be realized that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation". (SCC p. 736, para 9)

18. The gladsome jurisprudence across the Palk Strait has shed its luminescence on our shores in such cases as ***Leo Samson v. Sri Lankan Airlines Ltd***⁹ ; ***Jayakody v. Sri Lanka Insurance and Robinson Hotel Co. Ltd.***¹⁰ (*Robinson case*); ***Rajaratna v. Air Lanka Ltd***¹¹; ***Gunaratne v. Ceylon Petroleum Corporation***¹² ; ***SmithKline Beecham Biologicals S.A v. State Pharmaceutical Corporation of Sri Lanka***¹³; ***Wickrematunga v. Anuruddha Ratwatte***¹⁴ ; ***Prof. Dharmaratne v. Institute of Fundamental Studies***¹⁵.

19. From the foregoing it is quite clear that a wholistic and synoptic view of the incorporating legislation pertaining to the case at hand namely the Institute of Valuers law No. 33 of 1975 has to be taken for the purpose of ascertaining whether an action or inaction on the part of the Institute of Valuers would partake of the characteristics of an executive or administrative action. As this court alluded to the tests, they include factors such as financial control, administrative control, monopoly status, and whether the entity performs functions of public importance

⁹ (2001) 1 Sri.L.R 94

¹⁰ (2001) 1 Sri.L.R 365

¹¹ (1987) 2 Sri.L.R 128

¹² (1996) 1 Sri.L.R 315

¹³ (1997) 3 Sri.L.R 20

¹⁴ (1998) 1 Sri.L.R 201

¹⁵ (2013) 1 Sri.L.R 387

or governmental functions. In this characterization such entities are considered “State” if they act as surrogates or proxies of the government, performing functions that would otherwise be carried out by government departments.

20. The essence of the Petitioners’ complaint pertains to the grading of the Petitioners as Fellow Members of the Institute. The Petitioners made their respective applications as far back as March, 2019 but they have been notified that in accordance with a decision made at a meeting held on 16.05.2019 of the Council of the Institute of Valuers of Sri Lanka, the Council had decided to postpone decisions on the applications until such time as the Council received a report of a purported special committee.

21. The Petitioners state that as the Respondents were unlawfully and arbitrarily delaying the consideration of the said applications of the Petitioners, such action has led to an infringement of their fundamental rights guaranteed under the Constitution. They have also been notified that it is the Amendment Act No. 09 of 2019 that would be applicable in regard to their enrollment as Fellow Members.

22. I would then set out the relevant provisions of the statute governing the Institute of Valuers of Sri Lanka. For instance, Section 8 (2) (c) provides for the appointment of two corporate members by the Minister. The proviso to Section 8 (2) contemplates that in the case of the first Council, it is the Minister alone who would make the appointment of the members of the Council including its President. Section 9 which deals with the term of office of members of the Council refers to the power of the Minister to remove a member of the Council connoting the degree of control of the Minister. I would set down Section 17 *in extenso*.

23. Section 17, as amended sets out the powers of the Minister to make rules or Regulations, Section 17 provides that: (1) It shall be lawful for the Minister, from time to time, to make rules or regulations of his own motion until the constitution of the Council and thereafter, at the request of the Council, in respect of all or any of the following matters:

- (a) any matter required to be prescribed or in respect of which rules or regulations are authorized or required to be made;
- (b) the constitution of committees of the Council, the election or nomination of members of such committees, the powers, functions and duties of such committees and the conditions subject to which such powers, functions and duties may be exercised or discharged;
- (c) the appointment, remuneration, dismissal and disciplinary control of officers and servants of the Institute and the grant of allowances, gratuities and ex gratia payments upon their retirement or upon their death to the widows and orphans;
- (d) the fees payable by students for admission to the qualifying examination of the Institute and for courses of study provided by the Institute;
- (e) the remuneration of lecturers and examiners;
- (f) the establishment and regulation of a fund for the grant of financial assistance to the widows and orphans of Corporate Members and of Non-Corporate Members;
- (g) the administration and management of the property of the Institute;
- (h) the establishment and maintenance of a fund into which all moneys received by the Institute shall be paid and out of which all the expenses and liabilities incurred by the Council in the exercise or performance of its powers, functions and duties shall be met;
- (i) the books of accounts to be kept by the Institute;
- (j) the audit of the accounts of the Institute;
- (k) the manner in which moneys of the Institute may be invested;
- (l) the arbitration of disputes which may be referred to the Institute for determination; and
- (m) all such other matters herein before specifically not mentioned as may be necessary for carrying out the provisions of this Law or for the exercise of the powers of the Institute and the discharge of its duties.

(2) Every rule or regulation made under subsection (1) shall be published in the Gazette and shall come into effect on the date of such publication. Every such rule or regulation shall, as soon as may be after such publication, be placed before the National State Assembly for approval, and if such rule or regulation is not so approved, such rule or regulation shall be deemed to be rescinded from the date of such disapproval without prejudice to anything previously done thereunder. Notice of such disapproval shall be published in the Gazette.

24. It is worth noting that these provisions have not been repealed by the Amending Act No. 09 of 2019. Thus, this court observes a deep and pervasive influence of the executive over the entity's functional and administrative operations. Though the preamble of the Institute of Valuers of Sri Lanka Law No.33 of 1975 declares that the law provides for the establishment of an Institute of Valuers of Sri Lanka and of a Council which shall be responsible for the management of its affairs and for the control of the maintenance of professional standards and discipline by Members of the Institute, there is a brooding presence of the Government in regard to the areas I have enumerated above.

25. Section 28 of the Institute of Valuers of Sri Lanka Law No.33 of 1975 speaks about a donation of initial capital to the Institute out of the consolidated fund. Section 29 (2) refers to defraying into the fund of the Institute –

- a) all such amounts as may be voted from time to time by a resolution of Parliament for the use of the Institute; and
- b)

26. Though the argument was taken that such sums of money as indicated in (a) above have not been forthcoming in the recent past as sanctioned by a resolution of Parliament, it cannot be gainsaid that the legislative dictate in the law to vote on defrayment of money into the fund of the Institute has ceased to exist and thus, the Government remains the funder, if not substantial and that defrayment, past or prospective is constituted by grants from the government revenues to which additions are to be made from time to time along with other sources from which moneys flow into the fund of the Institute of Valuers.

27. The existence of financial aid in the form of an initial capital from the State and later tranches, is put beyond any pale of conjecture in Section 31 of the Institute of Valuers of Sri Lanka Law No.33 of 1975, which states that the provisions of the Public Corporations (Financial Control) Act shall *mutatis mutandis* apply to the financial control and accounts of the Institute.

28. From whichever perspective the facts are considered, this court reaches the inescapable conclusion that the action or inaction of the Institute of Valuers would amount to executive or administrative action within the meaning of Articles 17 and 126 of the Constitution. That will pave the way for the Petitioners to establish before this court whether the alleged infringement of Article 12 (1) by way of a denial did in fact take place.

29. In view of the foregoing conclusion on the threshold question which was principally pressed before us, we would not delve into the other preliminary objections that were taken before this court and we think it apposite that the merits of this application must be examined by this court at a hearing. We accordingly overrule the preliminary objection that was principally raised and proceed to fix this matter for inquiry.

Judge of the Supreme Court

Janak De Silva, J.

30. I have had the benefit of reading in draft the judgment proposed to be delivered by my learned brother Nawaz, J. I agree with his conclusion that the impugned acts fall within executive or administrative action within the meaning of Articles 17 and 126 of the Constitution. There is a deep and pervasive control of the State over the acts of the Institute of Valuers of Sri Lanka (Institute). The constituent features of the Institute establish that it is an instrumentality or agency of the State.

31. Regrettably, I do not have sufficient time to set out in greater detail my reasons for this conclusion as the draft judgment of my learned brother Nawaz, J. was received by me on 13.06.2025 and the judgment has to be delivered prior to the retirement of my learned brother Amarasekera, J. on 17.06.2025.

32. I regret my inability to agree with my learned brother Nawaz, J. that the merits of this application must now be examined by this court at a hearing. The learned Counsel for the 1st Respondent raised several preliminary objections at the hearing as set forth by my learned brother Nawaz, J., which includes objections on time bar and necessary parties. Only one preliminary objection has been considered and determined. Hence this matter cannot be set down for argument on the merits as that will amount to depriving the 1st Respondent of the opportunity to raise those preliminary objections for a more considered view.

33. Therefore, I direct that this application be now fixed for hearing and that the 1st Respondent is entitled to raise the preliminary objections on time bar and necessary parties at the hearing.

Judge of the Supreme Court

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

I had the privilege of reading the draft judgments written by my learned brothers, Hon. Justice Nawaz and Hon. Justice Janak de Silva. I also agree with the conclusion that the impugned act falls within executive or administrative action within the meaning of Article 17 & 126 of the Constitution.

I also agree with the view that the 1st Respondent is entitled to raise the preliminary objections on time bar and necessary parties at the hearing.

Judge of the Supreme Court