

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.*

SC/FRA/168/2024

Rathnayake Mudiyanseage Tharindu
Amila Uduwaragedera,
Jayasewana, Bandarawela Road,
Ettampitiya.

PETITIONER

Vs.

1. Sameera Madushanka Ranasinghe,
Sub Inspector of Police,
Borella Police Station.
Police Station Road, Borella.

2. Amila Bulathsinhala (70648),
Police Constable,
Borella Police Station,
Police Station Road, Borella.

3. Janaka Withanage,
Chief Inspector, Officer in Charge,
Borella Police Station,
Police Station Road, Borella.

4. A.G.J. Chandrakumara,
Deputy Inspector General,
Colombo District,
Sri Lanka Police Head Quarters,
Colombo 01.

5. T.M.W.D Tennakoon,
(former) Senior Deputy Inspector
General of Police,
Western Province.

Currently
Inspector General of Police,
Sri Lanka Police Headquarters,
Colombo 01.

6. Mr. C.D. Wickramarathne,
(former) Inspector General of Police,
Sri Lanka Police Headquarters,
Colombo 01.

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

RESPONDENTS

Before : Achala Wengappuli, J.
: Menaka Wijesundera, J.
: Sampath B. Abayakoon, J.

Counsel : A. Swasthika for the Petitioner.
: Madhawa Tennakoon, DSG for all the Respondents.

Considered on : 07-10-2025

Written Submissions : 11-11-2025 (By the Petitioner)

Decided on : 03-03-2026

Sampath B. Abayakoon, J.

The petitioner, by his petition dated 22-05-2024 instituted proceedings before this Court alleging that one or more of the respondents named in the petition infringed his fundamental rights guaranteed under Articles 11, 12(1), 13(1), 14(1)(a), 14(1)(b), 14(1)(g) and 14(1)(h) of the Constitution for the reasons stated in his application. Accordingly, he has asked for relief as prayed.

When this matter was taken up before this Court on 07-10-2025 for the consideration of granting of leave to proceed, the learned Deputy Solicitor General (DSG) who represented the respondents raised a preliminary objection as to the maintainability of this application on the basis that the application is time-barred.

The Court heard the objection raised by the learned DSG and the reply submissions by the learned Counsel who represented the petitioner in this regard. The Court also permitted both parties to file their respective written submissions in relation to the objection raised for the consideration of the Court.

It was the submission of the learned DSG that the incident complained of by the petitioner is alleged to have occurred on 28-07-2023, whereas the fundamental rights application has been filed before this Court on 22-05-2024.

It was his submission that since the petitioner has failed to file the application within one month of the alleged violation of the fundamental rights in terms of Article 126(2) of the Constitution, the application is time barred on the face of it.

Submitting as to the exception to Article 126(2), which is section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 (hereinafter referred to as the HRCSL Act), it was his position that the petitioner, being the aggrieved party, has failed to lodge a complaint to the Human Rights Commission for him to invoke the protection afforded by the said section to avoid the application of the time-bar against him.

The learned DSG submitted that the documents tendered to the Court establish the fact that the Human Rights Commission has commenced a *suo motu* inquiry, which does not mean that such an inquiry can capture the exception mentioned in section 13(1) of the HRCSL Act in order to override Article 126(2) of the Constitution. It was his position that if the Human Rights Commission commences an inquiry on its own motion in relation to any violation of fundamental rights, the applicable section for such an inquiry would be section 17 of the Act where the Commission may refer a question that arises as to the scope or ambit of a fundamental right for a determination of the Supreme Court. It was his position that since this was not such an occurrence, the application of the petitioner is clearly time-barred and should be dismissed *in limine*.

In reply to the above submission of the learned DSG, it was the position of the learned Counsel for the petitioner that if such an interpretation can be accepted in relation to section 13 and 14 of the HRCSL Act, it should create an absurdity as to the purpose of the Act. It was his position that in terms of section 14 of the Act, the Human Rights Commission can commence an inquiry on its own motion or on a complaint made by an aggrieved person or group of persons or anyone acting on behalf of an aggrieved person.

It was his submission that the provisions of section 13(1) capture all of the above situations and not in the manner the learned DSG submitted to the Court.

In his written submissions, the learned Counsel drew the attention of the Court to the document marked P-10, which is the B-Report filed before the Court when the petitioner was produced before the learned Magistrate after his arrest. It was his position that when the petitioner was under police custody, the petitioner made a verbal complaint to the Human Rights Commission officials on 28-07-2023 and since section 14 of the Act does not refer to in what form the complaint ought to have been made, his verbal complaint to the Human Rights Commission should be considered as relevant for the purposes of this action.

It was submitted further by the learned Counsel that the HRCSL Act does not provide an interpretation as to who can be termed as an aggrieved person. It was his submission that since section 14 provides for any other person to lodge a complaint on behalf of an aggrieved person, it would very well be that the Human Rights Commission commenced its inquiry after receiving such a complaint. Citing several judgments of our Superior Courts in his written submissions, the learned Counsel for the petitioner urged the Court to interpret the said section to give meaning to the fundamental rights jurisdiction.

The learned Counsel for the petitioner cited several judgments of relevance to argue that when considering the applicability of fundamental rights, the Court should not rely on mere technicalities of this nature and consider the rights of the citizens as paramount in giving redress to affected parties.

Consideration of the preliminary objection

In terms of Article 126(2) of the Constitution, any allegation of violation of fundamental rights should be brought before the Supreme Court within one month thereof seeking remedy.

The said Article 126(2) reads as follows-

126.(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.

There cannot be any argument that the present petition before the Court has been filed on 22-05-2024 and the alleged incident has occurred on 28-07-2023, which, on the face of it, has been filed some ten months after the alleged violation of fundamental rights.

Hence, in view of the objection raised as to the maintainability of this application, it is my view that only if the petitioner can establish that his application would come under the exception as provided in terms of section 13(1) of the HRCSL Act, he will be in a position to proceed with this application any further in order to seek leave to proceed in relation to the alleged violation of fundamental rights.

There is no denial that the investigation carried out by the HRCSL was on its own motion, but the argument of the learned Counsel for the petitioner was that the statement made in that regard by the petitioner should qualify as a complaint made by the relevant aggrieved party to the HRCSL.

In view of the submissions made by the parties, I find it relevant to reproduce section 13 where computation of time for the purpose of Article 126(2) of the Constitution has been set out, and also section 14 of the HRCSL Act where

the mode of commencement of an investigation on a complaint by the Commission has been spelt out.

The relevant section 13 (1) reads as follows,

13. (1) Where a complaint is made by an aggrieved party in terms of section 14, to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, the period within which the inquiry into such complaint is pending before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126 (2) of the Constitution.

The section 14 of the HRCSL Act reads thus,

14. The Commission may, on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, investigate an allegation of the infringement or imminent infringement of a fundamental right of such person or group of persons caused –

(a) by executive or administrative action; or

(b) as a result of an act which constitutes an offence under the Prevention of Terrorism Act, No. 48 of 1979, committed by any person.

The reading of section 14 makes it clear that the Commission may commence an investigation as to an allegation of infringement or imminent infringement of a fundamental right in the following manner:

1. On its own motion or;
2. On a complaint made to it by an aggrieved person or, by a group of persons or;

3. A person acting on behalf of an aggrieved person or a group of persons.

Although it was contended that the petitioner made an oral complaint to the Human Rights Commission as an aggrieved person, which would qualify under the 2nd criteria of section 14, I am not in a position to agree.

It is clear that after the Human Rights Commission had commenced an inquiry on its own motion in relation to the incidents occurred on the relevant day, where the petitioner may have made a statement as part of the said inquiry initiated by the Commission. Although the petitioner may also be an aggrieved person, it is clear that the applicable provision of section 14 would be the commencement of an inquiry by the Human Rights Commission on its own motion.

Though the term ‘aggrieved party’ may not have been separately interpreted in the HRCSL Act, section 13(1) is clear that it is applicable to a situation where a complaint is made by an aggrieved party to the Commission within one month of the alleged or imminent infringement of a fundamental right.

I am in no position to agree with the contention of the learned Counsel for the petitioner that Article 126(2) of the Constitution should be given a liberal interpretation since the Supreme Court, while interpreting the applicability of the one-month rule, has pronounced clearly that it should be given a strict interpretation subject to section 13(1) of the HRCSL Act.

In the case of **Edirisuriya Vs. Nawarathnam and Others (1985) 1 SLR 100 at page 105**, it was observed:

“This court has consistently proceeded on the basis that the time limit of one month set out in Article 126(2) of the Constitution is mandatory.”

Gamaethige Vs. Siriwardena (1988) 1 SLR 384 at page 400 where Mark Fernando J. cited the case of **Jayawardena Vs. Attorney-General, (F.R.D. (1) page 175)** with approval where it was held:

“... an application made more than one month after the alleged infringement was refused on the ground that the jurisdiction of this Court

cannot be exercised after the lapse of one month from the date of the executive or administrative act complained of.”

In the case of **SC(FR) Application No. 542/2009 decided on 20-01-2021:**

Per Priyantha Jayawardena, P.C., J.,

“Article 126(2) of the Constitution states that an application for infringement or imminent infringement of Fundamental Rights can be filed “within one month thereof” in the Supreme Court.

The word “within” used in the said Article requires the period of one month to be calculated from the date of the alleged infringement, imminent infringement, or from the date on which the petitioner became aware of the alleged infringement, if knowledge on the part of the petitioner is required to establish the alleged infringement.”

I am in agreement with the submission of the learned DSG that in an investigation carried out by the Commission on its own motion, the applicable section would be section 17 of the HRCSL Act, which reads as follows.

17. Where in the course of an inquiry or investigation conducted by the Commission a question arises as to the scope or ambit of a fundamental right, the Commission may refer such question to the Supreme Court under Article 125 of the Constitution, for the determination of the Supreme Court.

It is my view that apart from referring a matter for the interpretation of the Constitution in terms of Article 125 of the Constitution, the Human Rights Commission is empowered to come to its own findings independently and take necessary steps as the Commission is empowered to act based on an investigation carried out by the Commission on its own motion. In my view, that is the very reason why there should be a distinction between a complaint made by an aggrieved person and an investigation commenced by the Commission on its own motion.

For the reasons as stated above, I am of the view that the petitioner’s failure to come before this Court within one month of the alleged infringement of his

fundamental rights as required by law, or lodge a direct complaint with the Human Rights Commission as an aggrieved party or on behalf of him, is fatal for the maintainability of this application before the Court.

Accordingly, agreeing with the preliminary objection raised on behalf of the respondents, the petition is hereby dismissed *in limine*.

There will be no costs of this application.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court