

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

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

SC / FR / 360 / 2022

1. Sumith Prasanna Niroshan Fernando,
No. 6/56, Pallansena North,
Kochchikade.

2. Wewaldeniya Namal Roy Fernando,
No. 200, Fathima Road,
Kochchikade.

3. Nanayakkara Warnakula Patabandige
Teniran Sangeeth Perera,
No. 18/2, Duwana,
Negombo.

4. N. Pradeep Chamara Fernando,
No. 46, Sirakandawura Road,
Kattuwa,
Negombo.

5. Warnakulasooriya Anthony Roshan
Condrad Fernando,
No.61/40, Luvis Place,
Negombo.

6. Balasuriya Nanda Sulochana Perera,
No.32/2, Periyamulla,
Negombo.

PETITIONERS

-Vs-

1. The Negombo Municipal Council,
Negombo.

2. W.M. Dayan Lanza,
Mayor,
The Negombo Municipal Council,
Negombo.

3. E.A.I.K. Edirisinghe,
Secretary,
The Negombo Municipal Council,
Negombo.

4. Alhaj M.A. Izeid Fareez

5. Antony Jayaweera

6. M. Ranjith Sepala Fernando

7. L. Jeewanga Mirando

8. M.A. Jude Ranjith Fernando

9. M.A. Antony Dias

10.D. Jude Perera

11.B.J. Pattric Fernando

12.S. Nandani

13.W. Mary Perera

14.W. Geethani Fernando

15. H.M. Miula Padmini
16. W. Rani Rodrigo
17. B.S. Winodani Perera
18. S. Gaweessa Gayathri
19. W. Shaamal Harshana Fernando
20. M.N. Nazmin Rose
21. M. Emil Rohan Fernando
22. Herman Kurera,

All members of the Negombo
Municipal Council,
Negombo.

23. The Hon. Attorney-General,
Attorney-General's Department,
Hulftsdorph Street,
Colombo 12.

RESPONDENTS

Before: S. Thurairaja, PC, J
A.H.M.D. Nawaz, J &
Mahinda Samayawardhena, J

Counsel: Rashaal Sachintha Seresinghe with Lasodha Seresinghe instructed
by Nadeeka B. Senanayake for the Petitioners.

Rasika Dissanayake with Shabbeer Huzzair for the 1st to 3rd
Respondents. Sabrina Ahmed, SSC for the 23rd Respondent.

Argued on: 07.11.2024

Decided on: 19.03.2026

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

1. The Petitioners, who were elected members of the Negombo Municipal Council, invoked the jurisdiction of this court under Article 126 of the Constitution alleging an infringement of their fundamental right to equality guaranteed by Article 12(1) of the Constitution. Leave was granted on the alleged violation of Article 12(1) of the Constitution.
2. The gravamen of their petition concerns (i) the conduct of a tender processes relating to municipal properties and (ii) their suspension for a period of one month from participation in Council proceedings. Essentially it is their suspension on 06.10.2022 that constitutes the basis of their application before this court. It was contended that these acts were arbitrary, *mala fide*, and discriminatory.
3. The Respondents resisted the application, asserting that the matters complained of arise from internal governance decisions lawfully taken within the framework of municipal administration and that no constitutional violation was been established.

Factual Matrix

4. It would appear from the material placed before this court that disputes had arisen on a previous occasion within the Council concerning the calling and awarding of tenders in respect of certain municipal properties.
5. As a result, the Petitioners had previously invoked the jurisdiction of this court in SC / FR / 314 / 21. In those proceedings, leave to proceed was granted and certain undertakings were recorded. The matter was thereafter terminated.

6. What forms the principal complaint of the Petitioners concerns a proposal that was taken up for debate on the floor of the Council on 06.10.2022.
7. One of the members of the Municipal Council had brought forward a proposal that steps must be taken to lease out a Municipal property which was located closer the Chillaw – Colombo main road. This proposal was seconded and a debate had commenced.
8. When one of the Petitioners began to criticize the award of tenders on a previous occasion to a relative of the Mayor, the Mayor cautioned him to speak on the subject matter under discussion. There had been arguments on the floor of the Council and since irrelevant matters were being brought on the floor the proceedings had become noisesome.
9. This chaos resulted in the naming of the Petitioners and a resolution had been put to vote on the disruptive behavior alleged against the Petitioners. A perusal of the proceedings which is appended to the statement of objections as **R1** shows that the resolution to suspend the Petitioners was put to vote and 20 members had voted in favour of the resolution and 7 members against the resolution, while 3 members had abstained. As such, the Petitioners were suspended on 06.10.2022 for a period of one month. Quintessentially, it is this suspension that forms the foundation of the present application.

The Petitioners' Contentions

10. Learned counsel for the Petitioners submitted that the impugned suspension constituted a violation of Article 12(1) inasmuch as the Petitioners had been subjected to unequal and arbitrary treatment.

11. Undoubtedly, in articulating the “new doctrine” on equality in the case of ***Royappa v. State of Tamil Nadu***¹, Bhagwati J. (with Chandrachud and Krishna Iyer JJ. agreeing) expounded the new theory as follows;

[e]quality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is the antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 [equality clause], and if it affects any matter relating to public employment, it is also violative of Article 16 [equality in public employment].

12. The court applied that theory in ***Maneka Gandhi v. Union of India***² and ***Ramana v. International Airport Authority***³ both of which could have been decided by using the classification doctrine. The new doctrine was further explained by Justice Bagwathi in ***Ajay Hasia v. Khalid Mujib Schravardi***⁴ in the following tenor;

“It must therefore [that Royappa has been adopted in other judgments] now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not a paraphrase

¹ (1974) AIR 555 (SC)

² (1978) AIR 597 (SC)

³ (1979) AIR 1628 (SC)

⁴ (1981) 1 SCC 722

*of Article 14, nor is it the objective and end of that Article. It Is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality”.*⁵

13. The gladsome jurisprudence across the Palk Strait has shed iluminescence on our shores in such cases as ***Leo Samson v. Sri Lankan Airlines Ltd***⁶; ***Jayakody v. Sri Lanka Insurance and Robinson Hotel Ltd (Robinson case)***⁷; ***Rajaratna v. Air Lanka Ltd***⁸; ***Gunaratne v. Ceylon Petroleum Corporation***⁹; ***SmithKline Beecham Biologicals S.A v. State Pharmaceutical Corporation of Sri Lanka***¹⁰; ***Wickrematunga v. Anuruddha Ratwatte***¹¹; ***Prof. Dharmaratne v. Institute of Fundamental Studies***¹²; ***Karasinghe Arachchillage Ruwan Lasantha Deshapriya and Others v. The Institute of Valuers of Sri Lanka***¹³

14. It was contended that the treatment meted out to the Petitioners amounted to silencing the Petitioners in the Council.

The Respondents’ Position

15. The Respondents, for their part, submit that no finding of wrongdoing emerged from the previous FR application (SC / FR / 314 / 21); that proceedings therein were terminated upon undertakings being recorded; and that no quashing order was issued by this Court.

⁵ Ibid

⁶ (2001) 1 Sri.L.R 94

⁷ (2001) 1 Sri.L.R 365

⁸ (1987) 2 Sri.L.R 128

⁹ (1996) 1 Sri.L.R 315

¹⁰ (1997) 3 Sri.L.R 20

¹¹ (1998) 1 Sri.L.R 201

¹² (2013) 1 Sri.L.R 387

¹³ SC / FR / 372 / 2019 Decided on 16.06.2025

16. It is further submitted that fresh tenders were called in accordance with procedure and that the allegations of manipulation are unsupported by documentary material.
17. With respect to the suspension, the Respondents assert that it was imposed pursuant to a resolution lawfully adopted by vote following disorderly conduct during Council proceedings, and that it was temporary in nature.
18. Article 12(1) guarantees equality before the law and the equal protection of the law. It is well settled that not every adverse decision constitutes a violation of this guarantee. The discrimination complained of must be intentional, purposeful, and lacking in rational justification.
19. It is on the template of hostile discrimination which is devoid of reasonable basis that the merit of the application must be assayed. It is against this doctrinal backdrop that the present complaints must be examined.

The Prior Proceedings

20. The reliance placed by the Petitioners on SC / FR / 314 / 21 cannot advance their case.
21. The material before this court discloses that in those proceedings leave to proceed was granted and undertakings were recorded. The matter was thereafter terminated. No final adjudication was made declaring a violation of fundamental rights, nor was any order issued nullifying the impugned tenders.
22. The prior proceedings therefore cannot be construed as a judicial determination supportive of the present allegation of discrimination.

The Fresh Tender Process

23. The allegations concerning manipulation of the tender process are serious in character. However, proceedings under Article 126 are founded upon proof, not conjecture.

24. The Petitioners have not placed before Court documentary material demonstrating deviation from established procurement procedures. In the absence of such material, this Court is unable to conclude that the tender process was conducted in a manner that amounts to constitutionally impermissible discrimination against the Petitioners.

The Suspension

25. The central complaint concerns the one-month long suspension. The record indicates that the suspension was imposed pursuant to a resolution adopted by vote within a deliberative body. It was limited in duration and did not result in the removal of the Petitioners from office.

26. The legal authority of Councils to impose sanctions such as naming and suspension from Council meetings has been challenged in other jurisdictions and the cases have often emphasized the issues of procedural fairness, freedom of expression vis-à-vis the legal authority of Councils to impose sanctions – *R (Harvey) v Ledbury Town Council*¹⁴, *Calver v. Adjudication Panel for Wales*¹⁵

27. Councils are required to adopt a code of conduct for their members, which typically outlines expected standards of behaviour. Such a code of conduct and the regulation of Council meetings have been formulated under the Local Authorities Ordinance and it has been published in Extraordinary Gazette no. 541/17 dated 20 January 1989. It is in accordance with these regulations that the naming and suspensions have been effected.

¹⁴ [2018] EWHC 1151 (Admin)

¹⁵ [2012] EWHC 1172

28. In any event, if internal political disagreements within elected bodies are component elements of internal governance decisions taken within the framework of Municipal governance, the suspension did not prejudicially affect the Petitioners as the next meeting after the suspension took place in a month's time and all these Petitioners are said to have attended the said Council meeting. In other words, the suspension which followed after a vote on a resolution has not caused unjustifiable restrictions on their right to represent their electors and I find no violation of Article 12(1) of the Constitution therein.

29. Article 12(1) does not render this court a supervisory authority over internal political disagreements within elected bodies. Absent proof of intentional and unjustifiable discrimination, the constitutional guarantee is not engaged.

30. On the material before court, such intentional discrimination has not been established.

31. Having given anxious and careful consideration to the submissions of learned Counsel and the material placed before Court, I am of the view that the Petitioners have failed to discharge the burden of establishing that the impugned acts constitute a violation of Article 12(1) of the Constitution.

32. In the absence of clear proof of intentional discrimination or constitutionally impermissible arbitrariness, this Court cannot intervene in the exercise of its fundamental rights jurisdiction.

Accordingly, the **application is dismissed.**

Judge of the Supreme Court

S. Thurairaja, PC, J.

I agree

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree

Judge of the Supreme Court