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

CASE NO: SC/FR/06/2023

1. Marapitiya Arachchilge
   Manjula Somawardana,
   No. 143/A,
   Mailawalana, Kirindiwela.
2. Hewa Pawulage Chandi Dilum Munidasa,
   No. 7, Kumara Keerthi Mawatha,
   Walpola, Matara.
3. Amarasingha Arachchilage
   Mahesh Pradeepa Sampath,
   No. 20/7/2, Darshana Mawatha,
   Hokandara South, Hokandara.
4. Wijesinghe Arachchige Haral
   Prasley Perera,
   No. 387/5, Goda Uda Road,
   Ihala Bomiriya, Kaduwela.
5. Sitisekara Mudiyanselage
   Premarathna Sitisekara,
   No. 199, Obawatta,
   Heiyanthuduwa.
6. Wijahaluwalage Amarajeewa,
   Mailamada, Kumbukwewa.
7. Kadinappulige Ganga Chandi Kularathne,
   No. 71/2, Katuwalamulla, Ganemulla,
8. Pilapitiye Gedara Darshana Wimalarathne,
   No. 101/14, Tikiriraja Mawatha,
   Bandarawatta.

9. Malawara Arachchige Nishanthi,
No. 116/09, D.S. Senanayake Mawatha,
Battuwatta, Ragama.
10. Athukoralage Don Ajith Pushpakumara,
No. 352/6, Suwa Mawatha,
Walgama, Athurugiriya.
11. Demal Giriya Gamage Jayanthu Lalin Trinti Bandara, No. 123/A/4, Kothalawala,
Kaduwela.
12. Illandari Deva Dishan Priyadarshana Permarathna, No. 352/A,
4th Mile Post, Karandeniya.
13. Herath Mudiyanselage Premarathna Banda,
Thalagolla, Kanulwela, Bibila.
14. Rajapaksha Mudiyanselage
Chaminda Perera,
No. 76, Kospelavinna, Rathnapura.
15. Adikari Mudiyanselage
Abayawikrama Bandara,
Dewala Road, Baduluwela,
Dambagalla, Monaragala.
16. Siyambalape Kankanmalage
Don Nishantha,
No. 57/2, Palabotekanda,
Pahala Kosgama, Kosgama.

Petitioners

Vs.

1. Neel Bandara Hapuhinne
1A. K.D.N. Ranjith Asoka
1B. W.V.P. Priyankara Yasarathna
1C. S. Aloka Bandara

Secretary,
Ministry of Public Adminstration,
Home Affairs, Provincial Council and
Local Government,
Independence Square,
Colombo 7.

2. S. Aloka Bandara,

2A. N.U.M. Mendis,
Director-General of Combined Services,
Ministry of Public Administration,
Home Affairs, Provincial Councils and Local
Government, Independence Square,
Colombo 7.

3. G.K.D. Liyanage,

3A. K.P.G. Pushpakumara,
Government Printer,
Department of Government Printing,
No. 118, Dr. Danister De Silva Mawatha,
Colombo 8.

4. The Secretary of the Public
Service Commission,
Office of the Public Service
Commission, No. 1200/9,
Rajamalwatta Road,
Battaramulla.

5. Hon. Justice Jagath Balapatabendi,

5A. Sanatha J. Ediriweera,
Chairman,
Public Service Commission

6. Indrani Sugathadasa,

6A. S.M. Mohamed,

Member,
Public Service Commission

7. T.R.C. Ruberu,

7A. N. H. M. Chithrananda,
Member,
Public Service Commission

8. Ahamod Lebbe Mohamed Saleem,

8A. Prof. N. Selvakkumaran,
Member,
Public Service Commission

9. Leelasena Liyanagama,

9A. M.B.R. Pushpakumara,
Member,
Public Service Commission,

10. Dian Gomes,

10A. Dr. A.D.N. de Zoysa,
Member,
Public Service Commission.

11. Dilith Jayaweera,

11A. Mrs. R. Nadarajapillai,
Member,
Public Service Commission.

12. W.H. Piyadasa,

12A. Mr. C. Pallegama,
Member,
Public Service Commission.

13. Suntharam Arumainayaham,

13A. Mr. G.S.A. de Silva PC,
Member,
Public Service Commission,
5th to 13th A Respondents at,

Office of the Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.

14. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Menaka Wijesundera
Hon. Justice M. Sampath K.B. Wijeratne

Counsel: Lasantha Garusinghe with Ms. Navoda Wanniarachchi for the Petitioners.
Sabrina Ahamed, S.S.C., for the Hon. Attorney General.

Written submissions:
By the Petitioner on 11.07.2025.
By the Respondents on 29.01.2025.

Argued on: 11.09.2025

Decided on: 17.12.2025

Introduction

Sixteen petitioners, who are officers in the Combined Services attached to the Department of Government Printing, filed this fundamental rights application on 10.01.2023, naming the Secretary and the Director General of Combined Services of the Ministry of Public Administration, the Government Printer, and the Public Service Commission as respondents. They alleged the violation of their fundamental rights guaranteed under Articles 12(1) and 14(1)(g) of the Constitution by:

(a) Combined Services Circular No. 2/2022 dated 01.08.2022 marked P1, issued by the Director General of Combined Services under delegated authority of the Public Service Commission;

(b) The list of Annual Transfers for the Combined Services for the year 2023 dated 16.11.2022 marked P18, insofar as it relates to the petitioners; and

(c) The Appeal Decision of the Public Service Commission dated 23.12.2022 marked P20, affirming the said transfers.

This Court granted leave to proceed on the alleged violation of Article 12(1) and issued an interim order preventing the respondents from giving effect to the impugned transfers.

Objections, counter-objections, and pre-argument written submissions were filed, and the matter was fixed for argument. At the hearing, learned Senior State Counsel for the respondents moved that the preliminary objection on the ground of time bar be decided prior to the consideration of the merits. Both parties were heard on the preliminary objection, and this order pertains to that objection.

Time bar objection

Article 126(2) of the Constitution mandates that a person alleging the infringement or imminent infringement of a fundamental right by executive or administrative action shall invoke the jurisdiction of this Court within one month of the alleged infringement. The time limit prescribed therein is mandatory. The said Article provides as follows:

> *Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf, within one month thereof, in*

> *accordance with such rules of court as may be in force, apply to the Supreme Court by way of 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.*

However, the rigidity of this time limit has been relaxed in limited circumstances by:

(a) judicial precedent; and
(b) statutory provisions

I will address these two aspects separately in due course.

Proper stage for raising a time bar objection

Learned Counsel for the petitioners contends that, as the time-bar objection was not taken up in the objections but only in the pre-argument written submissions, this Court should not entertain it.

In terms of section 39 of the Judicature Act No. 2 of 1978, where a court of first instance has plenary jurisdiction to adjudicate a matter but its jurisdiction has been invoked in an incorrect manner, any objection to jurisdiction shall be taken at the earliest possible opportunity. Such an objection cannot be raised subsequently. This section has no application to the superior courts.

Nevertheless, it is the *cursus curiae* of this Court that a time-bar objection in a fundamental rights application shall be raised before the case is taken up for argument, that is, in the objections or in the pre-argument written submissions, and not for the first time at the hearing or in post-argument written submissions.

This position was examined in *Romesh Cooray v. Jayalath, Sub-Inspector of Police and Others* [2008] 2 Sri LR 43. In that case, counsel for the 6th respondent raised the time-bar objection for the first time at the argument. Bandaranayake J. (as she then was), having considered the nature of fundamental rights applications together with the procedure prescribed by the Supreme Court Rules of 1990 in respect of such applications, observed at page 51 as follows:

> *Accordingly on a consideration of the aforementioned Rules, it is evident that a preliminary objection should be raised at the time the objections are filed and/or should be referred to in the written submissions that has to be tendered in terms of the Rules. The objective of this procedure is quite easy to comprehend. The whole purpose of objections and written submissions is to place their case by both parties before Court prior to the hearing and when the petitioner's objections are taken along with the objections and/or written submissions filed by the respondents prior to the hearing, it would not come as a surprise either to the affected parties or to Court and the applications could be heard without prejudice to any one's rights. Therefore, as correctly pointed out by the learned President's Counsel for the petitioner, the earliest opportunity the 6th respondent had of raising the aforementioned preliminary objection was at the time of filing his objections and written submissions in terms of the Supreme Court Rules, 1990, as the objections and/or the written submissions should have contained any statement of fact and/or issue of law that the 6th respondent intended to raise at the hearing.*
>
> *Admittedly, the 6th respondent had not raised the preliminary objection on the ground of the application being filed out of time either in his objections or in the written submissions. In the circumstances, it is*

> *apparent that there is no merit in the objection raised by the 6th respondent.*

In *Randeniya v. Chairman, Public Service Commission and Others* [2020] 2 Sri LR 88, the time-bar objection was likewise raised only at the argument. Jayasuriya C.J., whilst emphasising that a party seeking shelter under section 13(1) of the Human Rights Commission Act to circumvent the time bar objection is obliged to place material before the Court to show that an inquiry into his complaint is pending before the Human Rights Commission, further held at 102-103:

> *I observe that this Court on 14.05.2013 had granted leave to proceed in this matter. There is no material indicating that the Court considered the 'time bar' when granting leave to proceed. At the argument stage Court heard submissions of both parties on merits even though the learned Deputy Solicitor General raised an objection on the basis of time bar. Therefore, I proceeded to consider all such submissions and to make the determination on merits, following the practice adopted in Ananda Dharmadasa et al v. Ariyaratne Hewage et al [2008] 2 SLR 19, even though this application could have been dismissed in limine on the basis of time bar.*

In the present case, the respondents have raised the time-bar objection before the matter was taken up for argument, namely in their pre-argument written submissions. This accords with the procedural expectations articulated in *Romesh Cooray v. Jayalath* and subsequent authorities, which emphasise that such objections shall be raised at the earliest opportunity, that is, at the time of support for leave to proceed or when filing objections, and at the latest in the pre-argument written submissions. The petitioners have had full opportunity to respond. Accordingly, the objection has been raised in a timely and proper manner, and the petitioners' contention to the contrary is without merit.

Judicial precedent

The relaxation of the one-month rule through judicial precedent is founded predominantly on the maxim *lex non cogit ad impossibilia*, which means that the law does not compel a person to do what is impossible.

If a person has been held incommunicado for more than one month following the alleged infringement of his fundamental rights, he should not be denied the opportunity to be heard on the ground that he failed to invoke the jurisdiction of this Court within one month of the infringement. In such circumstances, the one-month period will begin to run only from the date on which he first regains the ability to communicate with the outside world and take steps to vindicate his rights.

Similarly, where the infringement occurs as a result of an act not immediately known to the petitioner, the one-month period will commence only from the date on which he first becomes aware of the violation.

Sharvananda C.J., in *Mutuweeran v. The State* (5 Skantha's Law Reports 126 at 130), observed as follows:

> *Because the remedy under Article 126 is thus guaranteed by the Constitution, a duty is imposed upon the Supreme Court to protect fundamental rights and ensure their vindication. Hence Article 126(2) should be given a generous and purposive construction. The one month prescribed by Article 126(2) for making an application for relief by a person for infraction of his fundamental right applies to the case of the applicant having free access to his lawyer and to the Supreme Court.*

In that case, the petitioner had been detained from the date of his arrest on 28.07.1986 until the filing of the petition on 03.10.1986. At page 129, Sharvananda C.J. articulated the guiding criterion for determining compliance with the one-month time limit in the following terms:

> *In my view, Article 126(2) postulates a person whose freedom of movement is not fettered by being kept in custody or detention, who has free access to the Supreme Court to apply for relief under Article 126 of the Constitution.*

In *Edirisuriya v. Navaratnam* [1985] 1 Sri LR 100 at 105-106, Ranasinghe J. (as he then was), with the concurrence of Sharvananda C.J., citing *Vadivel Mahenthiran v. Attorney-General* (SC Application No. 68/1980, SC Minutes of 05.08.1980) and *Hewakuruppu v. G.A. de Silva, Tea Commissioner* (SC Application No. 118/84, SC Minutes of 10.11.1984), held that although the one-month time limit stipulated in Article 126(2) is mandatory, the Court may, in a fit and proper case, entertain an application made outside that period if an adequate excuse for the delay is established. His Lordship further held that where the petitioner has been held incommunicado, the maxim *lex non cogit ad impossibilia* applies, for the law does not expect a person to do the impossible. This dictum has been cited with approval in several later decisions, including *Ranaweera v. Sub-Inspector Wilson Siriwardena* [2008] 1 Sri LR 260 at 271.

In *Gamaethige v. Siriwardena* [1988] 1 Sri LR 384 at 401, Mark Fernando J. acknowledged that this Court has not merely a discretion but, in appropriate circumstances, a duty to entertain a fundamental rights application filed out of time, where the unique facts and circumstances of the case so warrant.

> *The time limit of one month prescribed by Article 126(2) has thus been consistently treated as mandatory; where however by the very act complained of as being an infringement of a petitioner's fundamental right, or by an independent act of the respondents concerned, he is denied such facilities and freedom (including access to legal advice) as would be necessary to involve the jurisdiction of this court, this Court has discretion, possibly even a duty, to entertain an application made*

within one month after the petitioner ceased to be subject to such restraint. The question whether there is a similar discretion where the petitioner's failure to apply in time is on account of the act of a third party, or some natural or man-made disaster, would have to be considered in an appropriate case when it arises.

At page 402, Mark Fernando J. recapitulated the law as follows:

Three principles are thus discernible in regard to the operation of the time limit prescribed by Article 126(2). Time begins to run when the infringement takes place; if knowledge on the part of the petitioner is required (e.g. of other instances by comparison with which the treatment meted out to him becomes discriminatory), time begins to run only when both infringement and knowledge exist (Siriwardena v. Rodrigo [1986] 1 Sri LR 384, 387). The pursuit of other remedies, judicial or administrative, does not prevent or interrupt the operation of the time limit. While the time limit is mandatory, in exceptional cases, on the application of the principle lex non cogit ad impossibilia, if there is no lapse, fault or delay on the part of the petitioner, this Court has a discretion to entertain an application made out of time.

In *Siriwardena v. Brigadier Rodrigo* [1986] 1 Sri LR 384 at 387, Ranasinghe J. (as he then was) held:

The period of one month specified in Sub-Article (2) of Article 126 of the Constitution would ordinarily begin to run from the very date the executive or administrative act, which is said to constitute the infringement, or the imminent infringement as the case may be, of the Fundamental Right relied on, was in fact committed. Where, however, a petitioner establishes that he became aware of such infringement, or the imminent infringement, not on the very day the act complained of was so committed, but only subsequently on a later date, then, in such

> *a case, the said period of one month will be computed only from the date on which such petitioner did in fact become aware of such infringement and was in a position to take effective steps to come before this Court.*

In *Dayaratne and others v. National Savings Bank and others* [2002] 3 Sri LR 116, the objection based on the time bar, namely that the interviews and decisions relating to promotions had taken place more than one month before the application was filed, was rejected. The Court held that time began to run against the petitioners only when the names of the promotees were announced. This demonstrates that the petitioner's awareness of the impugned act is central to the computation of the one-month time bar.

In *Sriyani De Soyza and others v. Chairman of the Public Service Commission* (SC/FR/206/2008, SC Minutes of 09.12.2016), Prasanna Jayawardena J. articulated the approach consistently adopted by this Court in applying Article 126(2) in the following manner:

> *However, this Court has consistently recognized the fact that, the duty entrusted to this Court by the Constitution to give relief to and protect a person whose Fundamental Rights have been infringed by executive or administrative action, requires Article 126(2) of the Constitution to be interpreted and applied in a manner which takes into account the reality of the facts and circumstances which found the application. This Court has recognized that it would fail to fulfill its guardianship if the time limit of one month is applied by rote and the Court remains blind to facts and circumstances which have denied a Petitioner of an opportunity to invoke the jurisdiction of Court earlier.*

These authorities demonstrate that, while the one-month time limit stipulated in Article 126(2) is mandatory, its application must be tempered by a realistic appreciation of the facts and circumstances of each case. The

constitutional duty of this Court to protect and vindicate fundamental rights cannot be fulfilled by a mechanical or rigid application of the time bar. Accordingly, where a petitioner clearly establishes that he was prevented, whether by impossibility, lack of awareness, or other circumstances beyond his control, but without any lapse, fault, delay, want of due diligence, or similar omission on his part, from invoking the jurisdiction of this Court earlier, the one-month period should be computed from the point at which he was first placed in a position to meaningfully seek relief.

The instant application of the petitioners, and the time-bar objection raised by the learned Senior State Counsel, do not fall within the ambit of the foregoing discussion. The petitioners rely on section 13(1) of the Human Rights Commission of Sri Lanka Act to meet the time bar objection.

Statutory provisions

The petitioners allege that their fundamental right guaranteed under Article 12(1) was violated by Combined Services Circular No. 2/2022 dated 01.08.2022 marked P1, whereby the Department of Government Printing was designated as a popular station to the detriment of the petitioners; and by the Transfer Orders issued for the year 2023 dated 16.11.2022 marked P18, which were made pursuant to the said circular.

This application was filed on 10.01.2023, well beyond one month from either the date of the impugned Circular or the date of the impugned Transfer Orders. The petitioners are therefore clearly out of time under Article 126(2).

The petitioners cannot rely on the Appeal Decision of the Public Service Commission dated 23.12.2022 marked P20, which affirmed the said transfers. The pendency or pursuit of such appeals or the pursuit of remedies before any other forum does not suspend, interrupt, or extend the

one-month period prescribed by Article 126(2) for invoking the jurisdiction of this Court. In *Gamaethige v. Siriwardena* [1988] 1 Sri LR 384 at 402, Mark Fernando J. stated that "*The pursuit of other remedies, judicial or administrative, does not prevent or interrupt the operation of the time limit.*"

However, section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 creates a statutory exception to the one-month rule. It provides as follows:

> *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.*

According to this provision, two conditions must be satisfied:

(a) The complaint shall be made to the Human Rights Commission "*within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action*"; and

(b) The period during which "*the inquiry into such complaint is pending before the Commission*" shall be excluded when computing the one-month period within which the petitioner is required to invoke the jurisdiction of this Court under Article 126(2).

The petitioners have tendered, together with the petition, the document marked P17 dated 14.09.2022 issued by the Human Rights Commission of Sri Lanka, which states that "ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව වෙත ඔබ විසින් 22/08 — දින යොමුකර ඇති පැමිණිල්ල, ඉහතකී අංකය යටතේ ලියාපදිංචි කර ඇති බවත් ඒ

පිළිබඳව කොමිෂන් සභාවේ අවධානය යොමු වෙමින් පවතින බවත් මෙයින් දැනුම් දෙමු." This document suggests that the petitioners made an undated complaint to the Commission, probably within one month of the issuance of the impugned Circular P1. However, the petitioners have not produced any further material to establish that the inquiry into that complaint was pending before the Commission at any point of time thereafter.

Complaints may be made to the Human Rights Commission for a variety of purposes, and one such purpose, as observed by Aluwihare J. in *Kithsiri v. Faiszer Musthapa* (SC/FR/362/2017, SC Minutes of 10.01.2018), may be to circumvent the time limit imposed by Article 126(2) of the Constitution.

There is, however, no compulsion or mandatory obligation on the Human Rights Commission to conduct an inquiry merely because a complaint has been lodged. Section 14 of the Human Rights Commission of Sri Lanka Act clearly provides that the Commission may, and not shall, investigate an allegation of infringement or imminent infringement of a fundamental right. Section 14 reads as follows:

> *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.*

As this Court has emphasised in a long line of decisions, the mere lodging of a complaint before the Human Rights Commission is insufficient to avert the operation of the time bar under Article 126(2). The petitioner shall also

establish that the Commission had commenced or was conducting an inquiry into such complaint during the relevant period. I respectfully concur with that view.

Although Murdu Fernando J. (as she then was) in *Ranasinghe v. Ceylon Petroleum Storage Terminals Ltd* [2019] 3 Sri LR 184 initially took the view that a complaint made to the Human Rights Commission within one month of the alleged violation was sufficient to attract the benefit of section 13(1), and that proof of the inquiry being pending before the Commission was unnecessary, on the basis that an aggrieved party has no control over the Commission's internal processes, Her Ladyship appears to have subsequently reconsidered and departed from that position, as Her Ladyship has since agreed with the reasoning of Janak De Silva J. in *Thilangani Kandambi v. State Timber Corporation* (SC/FR/452/2019, SC Minutes of 14.12.2022), where His Lordship clarified the correct legal position as follows:

> *(a) The initial view was that mere production of a complaint made to the Human Rights Commission of Sri Lanka within one month of the alleged infringement is sufficient to get the benefit of the provisions in section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 [Romesh Coorey v. Jayalath (2008) 2 Sri.L.R. 43, Alles v. Road Passenger Services Authority of the Western Province, (S.C.F.R. 448/2009, S.C.M. 22.02.2013)].*
>
> *(b) <u>However, the correct position is that a petitioner must show evidence that the Human Rights Commission of Sri Lanka has conducted an inquiry regarding the complaint or that an inquiry is pending. Simply lodging a complaint is inadequate.</u> [Subasinghe v. Inspector General of Police, SC (Spl) 16/1999, S.C.M. 11.09.2000; Kariyawasam v. Southern Provincial Road Development Authority and 8 Others, (2007) 2 Sri.L.R. 33; Ranaweera and Others v. Sub-Inspector Wilson*

Siriwardene and Others (2008) 1 Sri.L.R. 260; K.H.G. Kithsiri v Faizer Musthapha, (S.C.F.R. 362/2017, S.C.M. 10.01.2018); Wanasinghe v. Kamal Paliskara and Others, (S.C.F.R. 216/2014, S.C.M. 23.06.2021)].

Hence, the reliance placed on the judgment of Murdu Fernando J. in *Ranasinghe v. Ceylon Petroleum Storage Terminals Ltd* to contend that the mere acknowledgment of a complaint made to the Human Rights Commission is sufficient to take an application outside the one-month time limit, can no longer be regarded as good law.

In *Alagaratnam Manorajan v. Governor, Northern Province* (SC/FR/261/2013, SC Minutes of 11.09.2014), Wanasundera J. emphasised that Article 126(2) contains a constitutional time bar intended to ensure urgency, finality, and prompt invocation of the Supreme Court's fundamental rights jurisdiction. Her Ladyship further observed that section 13 of the Human Rights Commission of Sri Lanka Act must not be interpreted in a manner that overrides or suspends the one-month limitation in Article 126(2), but rather as a narrow exception that operates consistently with the purpose of the constitutional provision.

If a bare complaint to the Human Rights Commission were permitted to stop the running of time indefinitely, it would defeat the constitutional requirement of promptness and undermine the finality envisaged by Article 126(2).

Conclusion

For the foregoing reasons, I uphold the preliminary objection and dismiss the application.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court

M. Sampath K.B. Wijeratne, J.

I agree.

Judge of the Supreme Court