

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

In the matter of an Application under and in terms of Article 17 read along with Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Ahamed Lebbe Mohamed Saleem,
No.96, Kalyana Road
Sainthamaruthu 11.
2. Abdul Raheem Mohamed Aseem,
No.27, Hospital Road
Sainthamaruthu 09.

S.C.F.R. Application No: 07/2023

PETITIONERS

Vs.

1. Nimal G. Punchihewa,
Chairman, Elections Commission.
- 1A. R.M.A.L. Rathnayake,
Chairman, Elections Commission.
2. S.B. Diwarathne,
Member, Elections Commission.
- 2A. M.A. Pathmasiri Chandrawansha,
Perera,
Member, Elections Commission.
3. M.M. Mohamed,
Member, Elections Commission.
- 3A. Ameer Mohammed Faiz,
Member, Elections Commission.

4. K.P.P. Pathirana,
Member, Elections Commission.
- 4A. Anusuya Shanmuganathan,
Member, Elections Commission.
5. P.S.M. Charles,
Member, Elections Commission.
- 5A. Lakshman Dissanayake,
Member, Elections Commission.
6. Saman Sri Ratnayake,
Commissioner-General of Elections.

1st to 6th Respondents all at the
Elections Commission of Sri Lanka,
Elections Secretariat,
Sarana Mawatha,
Rajagiriya.
7. Mahinda Deshapriya,
Chairman,
National Delimitation Committee on
Demarcation of Wards for Local
Authorities.
8. Jayalath Dissanayake,
Member,
National Delimitation Committee on
Demarcation of Wards for Local
Authorities.
9. W.M.M.R. Adikari,
National Delimitation Committee on
Demarcation of Wards for Local
Authorities.

10. K. Thavalingam,
National Delimitation Committee on
Demarcation of Wards for Local
Authorities.

11. I.A. Hameed,
National Delimitation Committee on
Demarcation of Wards for Local
Authorities.

7th to 11th Respondents all at the
National Delimitation Committee on
Demarcation of Wards for Local
Authorities,
Surveyor General's Office Building,
Colombo 05.

12. Hon. Dinesh Gunawardena,
Prime Minister,
Minister of Public Administration,
Home Affairs, Provincial Councils
and Local Government,
Ministry of Public Administration,
Home Affairs, Provincial Councils
and Local Government,
Independence Square,
Colombo 07.

12A. Hon. A.H.M.H Abayarathna,
Minister of Public Administration,
Home Affairs, Provincial Councils
and Local Government,
Ministry of Public Administration,
Home Affairs, Provincial Councils
and Local Government,
Independence Square,
Colombo 07.

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

14. J.M.A. Douglas,
Ampara District Returning Officer,
District Secretary,
District Secretariat, Ampara.

14A. Chinthaka Abeywardena,
Ampara District Returning Officer,
District Secretary,
District Secretariat, Ampara.

15. A.M.K.S. Aththanayake,
Ampara District Assistant Returning
Officer,
Assistant Commissioner of Elections,
District Elections Office, Ampara.

RESPONDENTS

17. Pakeerthamby Uthumalebhai,
No.80 Jumma Mosque Road,
Kalmunai Town.

18. Abdul Cader Mohamed Althaf,
358/A, Makkamadi Road,
Maruthamunai 03.

ADDED RESPONDENTS

BEFORE: **Hon. Janak De Silva, J.**
Hon. K. Priyantha Fernando, J.
Hon. Sampath B. Abayakoon, J.

COUNSEL:

Suren Gnanaraj with Rashmi Dias for the Petitioners

Saliya Peiris, P.C., with Thanuka Nandasiri for the 1st to 6th, 14th and 15th Respondents

Nerin Pulle, P.C., ASG, with Sureka Ahmed, SSC, for the 7th to 13th and 16th Respondents

Sanjeewa Jayawardena, P.C., with Rukshan Senadheera for the 17th Added Respondent

Nizam Kariapper, P.C., with Ilham N. Kariapper and Chathurika Perera for the 18th Added Respondent

WRITTEN SUBMISSIONS:

21.03.2023 and 17.10.2025 by the Petitioners

13.10.2025 by the 1st – 6th, 14th and 15th Respondents

03.10.2025 by the 7th - 13th and 16th Respondents

07.10.2025 by the 18th Added Respondent

ARGUED ON: 19.09.2025

DECIDED ON: 07.05.2026

Janak De Silva, J.

The Petitioners are registered voters, residing in Sainthamaruthu. They are seeking to impugn the decision of one or more of the Respondents not to call for nominations or conduct an election of members to the newly constituted Sainthamaruthu Urban Council.

The Petitioners claim that the failure on the part of one or more Respondents to conduct the said election infringed the fundamental rights guaranteed to them under

Articles 10, 12(1), 12(2) and 14(1)(a) of the Constitution and the Sovereignty of the People which includes the Franchise guaranteed under Article 3 of the Constitution.

On 17.01.2023 Court issued order suspending the acceptance of nominations for the Kalmunai Municipal Council until this application is fully supported on 19.01.2023. On that date, Court extended the stay order until the final determination of this application.

Leave to proceed has been granted under Articles 10, 12(1) and 14(1)(a) of the Constitution.

Factual Matrix

Sainthamaruthu is a coastal town situated in the Eastern Province within the Administrative District of Ampara having a population of over 25,000 people. The State has recognized Sainthamaruthu as a separate village as early as 1897 with clearly demarcated boundaries as evinced by the Ceylon Government Gazette No. 5459 dated 19.02.1897.

In 1936, Sainthamaruthu was declared as a Village Council area and continued to remain so until 1987 when it was amalgamated with other villages of the Kalmunai Town Council to establish the Kalmunai Pradeshiya Sabha pursuant to the enactment of the Pradeshiya Sabha Act No. 15 of 1987 which was later upgraded in 2002 to become Kalmunai Municipal Council.

In 2017, two residents of Sainthamaruthu filed a fundamental rights application bearing No. S.C.F.R. 437/2017 seeking, *inter alia*, a direction on the Minister of Provincial Councils and Local Government to establish a new local authority for Sainthamaruthu.

Subsequently, the then Minister of Public Administration, Home Affairs, Provincial Councils and Local Government (Minister) issued an order under and in terms of Sections 284 (a), (b) and (d) of the Municipal Councils Ordinance (Chapter 252), published in Gazette No. 2162/50 dated 14.02.2020 (P8), ***dissolving the Kalmunai***

Municipal Council with effect from 19.03.2022 in order to vary its limits and for the purpose of constituting new Local Authorities.

On the same day, i.e. 14.02.2020, the Minister issued an order under and in terms of Sections 2, 3 and 9 of the Urban Councils Ordinance (Chapter 255) published in the same Gazette No. 2162/50 (P8) constituting an Urban Council named Sainthamaruthu Urban Council and appointing ***20.03.2022 as the date on which the term of office of the Sainthamaruthu Urban Council shall commence.*** This order also defined the administrative limits of the said Council.

On 18.02.2020, the learned SSC appearing for the Hon. Attorney General in S.C.F.R. Application No. 437/2017 informed Court that a Gazette notification has been issued making Sainthamaruthu a Local Authority. In view of this, the learned President's Counsel appearing for the petitioners in that case informed Court that proceedings may be terminated as the petitioners are given the substantial relief prayed for. The proceedings were accordingly terminated.

However, notwithstanding this intimation to Court by the Hon. Attorney General, the Minister had submitted a Note to the Cabinet of Ministers on the same day, i.e. 18.02.2020, informing the Cabinet of the publication of P8.

The Cabinet after considering the said Note took the following decision (R4):

“After discussion, it was noted that several requests have been made for the constitution of Local Authorities in several Districts by re-demarcating the boundaries of the existing Local Authorities and as such, Cabinet was of the view that it would be appropriate to take action pertaining to the proposal for the constitution of the Sainthamaruthu Urban Council along with all such requests, after carrying out a delimitation process and other formalities.”

On 22.02.2020 (R5), the Secretary to the Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government (Secretary) had informed the

Government Printer to cancel the publication of P8, stating that the Cabinet has informed to “cancel” P8.

It appears that consequent to this intimation, P8 had been removed from the website of the Government Printer [R5(a)]. This is confirmed by letter dated 18.08.2020 (R6) sent by the Government Printer, Gangani Liyanage to the Secretary. She goes on to state that P8 becomes invalid by its removal from the website and that if it is required to further invalidate it, the Gazette notification invalidating P8 can be published in the General Gazette after it is forwarded to the Government Printer.

An Additional Secretary to the Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government had by letter dated 20.08.2020 (R7) responded to this communication, requesting the Government Printer to publish a Gazette notification stating that P8 has been cancelled.

The Government Printer had done so by Gazette No. 2192 dated 04.09.2020. The 12th Respondent has, in his affidavit, claimed to have filed a copy of this notification along with the objections marked as R8. However, what has been annexed as R8 is in fact a copy of P8.

Nevertheless, the 7th to 13th and 16th Respondents have with their written submissions tendered a copy of this Gazette notification.

It appears that as a result of these acts, the Election Commission (1st to 6th Respondents) had excluded the Sainthamaruthu Urban Council from the list of Local Authorities in the Ampara District for which the Local Government elections were to be held, and effectively called for nominations from 340 other Local Authorities around the country, without calling nominations for the Sainthamaruthu Urban Council.

The Petitioners impugn the decision of the Election Commission (1st to 6th Respondents) and the Returning Officers (14th and 15th Respondents) not to call

nominations for the Local Government elections from the Sainthamaruthu Urban Council, even though it has been legally constituted through P8.

Moreover, the application also challenges the failure of the National Delimitation Committee on Demarcation of Wards for Local Authorities (7th to 11th Respondents) and the 12th Respondent, to carry out a proper delimitation process, and assign wards for the Sainthamaruthu Urban Council.

It is therefore alleged that these failures have led to the violation of rights guaranteed to all citizens of the country including the Petitioners, under Articles 10, 12(1) and 14(1)(a) of the Constitution.

Position of the 1st to 6th and 14th and 15th Respondents

Two preliminary objections have been raised by these Respondents. They claim that the application is time barred and that the Petitioners have suppressed material facts from Court and thereby failed to come before Court with clean hands.

These Respondents were aware of the publication of the two orders in P8 made under and in terms of Sections 284 (a), (b) and (d) of the Municipal Councils Ordinance (Chapter 252) and Sections 2, 3 and 9 of the Urban Councils Ordinance (Chapter 255) constituting an Urban Council named Sainthamaruthu Urban Council and appointing 20th March 2022 as the date on which the term of office of the Sainthamaruthu Urban Council shall commence.

However the Election Commission subsequently learnt that the Secretary had communicated to the Government Printer not to publish the initial decision to abolish the Kalmunai Municipal Council and determining the formation of the Sainthamaruthu Urban Council. Nevertheless, they do not possess any proof in this regard.

When the Minister of Public Services, Provincial Councils and Local Government published the Gazette (Extra Ordinary) No. 2262/8 dated 10.01.2022 extending the term of office of the members of each local authority, it included the Kalmunai Municipal Council as well. Hence the Election Commission verily believed that the

Minister of Public Services, Provincial Councils and Local Government acted on the premise that the initial decision to carve out a new local authority from Kalmunai Municipal Council had been revoked.

Therefore the Election Commission called for nominations for the Kalmunai Municipal Council.

Position of the 7th to 13th and 16th Respondents

These Respondents contend that:

- (i) The Gazette Extraordinary No. 2162/50 dated 14.02.2020 has been duly cancelled and no longer valid in law;
- (ii) Without prejudice to the above, the Gazette Extraordinary No. 2162/50 dated 14.02.2020 was void *ab initio* as the same is contrary to the provisions of the Constitution and the applicable law;
- (iii) The Petitioners are seeking to perpetuate an illegality and are not entitled to relief in terms of Article 126 of the Constitution;
- (iv) The decision of the Cabinet of Ministers dated 19.02.2020 to cancel the Gazette Extraordinary No. 2162/50 dated 14.02.2020 cannot be reviewed by this Court as it concerns a political question;
- (v) There has been no violation of the fundamental rights of the Petitioners under Articles 10, 12(1) and 14(1)(a) of the Constitution;
- (vi) The Petitioners have failed to name necessary parties and therefore this application should be dismissed *in limine*.

Position of the 18th Added Respondent

The 18th Respondent contends that P8 is *ex facie* void as the Minister has not invoked Section 284(e) of the Municipal Council Ordinance (Chapter 52) which is the specific provision empowering him to establish a new Municipal Council. It was further submitted that Section 284(d) therein, referred to in P8, only empowers the Minister to replace an existing Municipal Council with another, but not to create a new a new

local authority. Finally, It was submitted that any subsequent action taken to rescind P8 amounts to a mere rectification of an illegality, and not a cancellation of a valid legal instrument.

Validity of P8

The infringements alleged by the Petitioners is founded upon the assertion that P8 continues to be in force. Hence, let me begin the analysis by examining the claim that P8 is *ex facie* void and an illegality.

The validity of P8 was never challenged until the date of this application. Moreover, this ground has not been raised by any of the Respondents in the pleadings but was raised for the first time during the hearing.

Be that as it may be, this contention is completely misconceived in law.

According to the ‘presumption of validity’, administrative action is presumed to be valid unless or until it is set aside by a court [***Hoffmann-La Roche and Co. v. Secretary of State for Trade & Industry (1975) A.C. 295***].

This ‘presumption of validity’ exists pending a final decision by Court [Lord Hoffmann in ***R v. Wicks (1998) A.C. 92 at 115***, Lords Irvine LC and Steyn in ***Boddington v. British Transport Police (1999) 2 A.C. 143 at 156 and 161, and 173-4***].

In ***Smith v. East Elloe Rural District Council [(1956) A.C. 736, 769-770]*** Radcliffe L.J. held:

“An order, even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.”

Denning L.J. took a different view in ***Mcfoy v. United Africa Co. Ltd.*** [(1961) 3 All E.R. 1169 at 1172] in holding that “*You cannot put something on nothing and expect it to stay there, it will collapse*”.

However, Wade and Forsyth (*Administrative Law*, 9th Ed., Indian Edition, 305), states that the statement of Denning L.J. in ***Mcfoy (supra)*** is not the correct position in law.

I had occasion to examine this issue in greater detail in ***McCallum Brewing Company (Private) Limited v. Commissioner General of Excise and Another*** [C.A. Writ 469/2008, C.A.M. 18.12.2019], ***Weerasooriya v. Wijeweera, Director General of Customs and Others*** [C.A. (Writ) 259/2014, C.A.M. 22.06.2020] and ***Hettiarachchi and Another v. Pearl Weerasinghe, The Commissioner General of Labour and Others*** [S.C. Appeal 37/2018, S.C.M. 18.07.2025] and adopted the view taken in ***Smith (supra)***.

I see no reason to change my views on this issue [See ***Durayappah v. Fernando*** (1967) 2 AC 337; ***Hoffman-La Roche*** (*supra*. at pages 365-6) per Lord Diplock; ***Forbes v. New South Wales Trotting Club*** (1979) 25 ALR 1, 30 per Aickin J; ***London and Clydeside Estates Ltd v. Aberdeen District Council*** (1980) 1 WLR 182, 189-190 per Lord Hailsham; ***Calvin v. Carr*** (1980) AC 574, 589-90 ; ***R v. Panel on Take-Overs and Mergers; Ex Parte Datafin plc*** (1987) QB 815, 840 per Lord Donaldson MR; ***Wattmaster Alco Pty Ltd v. Button*** (1986) 76 ALR 256, 263-4 (FC); ***Martin v. Ryan*** (1990) 2 NZLR 209, 235-41 (Ryan, J.)].

Lewis [Clive Lewis, *Judicial Remedies in Public Law*, 5th ed., South Asia Edition (2017)] in discussing the meaning of null and void in administrative law states (at page 185) that:

*“The concept of nullity has been used to solve other problem arising in administrative law. For remedial purposes, the orthodox view is that an ultra vires act is regarded as void and a nullity. An act by a public authority which lacks legal authority is regarded as incapable of producing legal effects. **Once***

its illegality is established, and if the courts are prepared to grant a remedy, the act will be regarded as void from its inception and retrospectively nullified in the sense that it will be regarded as ever incapable of ever producing legal effects.” (emphasis added)

Thus, even where an act of a public authority is ultra vires and a nullity, for remedial purposes the illegality must be established before a Court.

As Wade and Forsyth (supra. at 281) states:

“...the court will treat an administrative act or order invalid only if the right remedy is sought by the right person in the right proceedings”

Wade and Forsyth (supra. at page 304) goes on to state as follows:

*“This must be equally true even where the ‘brand of invalidity’ is plainly visible for there also the order can effectively be resisted in law only by obtaining the decision of the court. **The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council, without distinction between patent and latent defects.** Lord Diplock spoke still more clearly [Hoffmann-La Roche & Co. v. Secretary of State for Trade & Industry (1975) A.C. 295 at 366], saying that **it leads to confusion to use such terms as ‘voidable’, ‘voidable ab initio’, ‘void’ or ‘a nullity’ as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced on by a court of competent jurisdiction.**”* (emphasis added)

Moreover, a divisional bench of five (5) judges of this Court in the **Colombo Port City Economic Commission Determination [S.C.S.D. Nos. 04/2021, 05/2021, 07/2021 to 23/2021, at pages 17-19]** adopted this position. This determination is binding on this bench as in **Bandaranaike v. Attorney General [(1982) 2 Sri.L.R. 786 at 792]** it was held that the descriptions 'determination' 'judgment', 'opinion' 'decision', 'conclusion' are different labels for the same concept.

For the foregoing reasons, I hold that the decision in ***Wathukarage Shantha Merrill Kumara v. National Gem and Jewelry Authority*** [SC/MISC/04/2014, S.C.M. 07.02.2025], relied upon by the learned ASG, is *per incuriam* to the extent it appears to hold that an *ultra vires* act is null and void and that there is no need for a formal determination of it by a court of law.

In any event, I am of the view that P8 is valid. The position of the 18th Respondent is that although Section 284(e) of the Municipal Council Ordinance (Chapter 52) empowers the Minister to establish a new Municipal Council, it is not referred to in P8.

It is trite law that an administrative body has the power to make an order notwithstanding that it may have relied on the wrong provision provided that it has the power to do so.

In ***Peiris v. Commissioner of Inland Revenue*** [65 N.L.R. 457] it was held that *it is well-settled that an exercise of a power will be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory. This principle has been applied even to cases where a Statute which confers no power has been quoted as authority for a particular act, and there was in force another Statute which conferred that power.*

This decision has subsequently been quoted with approval and followed in ***Albert v. Veeriahpillai*** (1981) 1 Sri.L.R. 110, ***Kumaranatunga v. Samarasinghe, Additional Secretary, Ministry of Defence and Others*** (1983) 2 Sri.L.R. 63) and ***Channa Pieris and Others v. Attorney-General and Others*** (1994) 1 Sri.L.R. 1) [See ***Fernando v. Attorney-General*** (1983) 1 Sri.L.R. 374, ***Edirisuriya v. Navaratnam*** (1985) 1 Sri.L.R. 100, 114, ***Joseph Silva v. Balasuriya & Others*** (S.C. Applications Nos. 112-115/1987, S.C.M. 26.05.86), ***Gunaratne v. Cyril Herath and Others*** (S.C. Application Nos. 96/97 and 97/87, S.C.M. 03.03.89, ***Wijesooriya v. Abeyratne and Others*** (S.C. Application No. 99/87, S.C. M. 03.03.89)].

Was P8 Revoked or Rescinded?

Section 18 of the Interpretation Ordinance No. 21 of 1901 as amended reads as follows:

*“Where any enactment, whether passed before or after the commencement of this Ordinance, confers power on any authority to issue any proclamation, or make any order or notification, any proclamation, order, or notification so issued or made **may be at any time amended, varied, rescinded, or revoked by the same authority** and in the **same manner**, and subject to the like consent and conditions, if any, by or in which or subject to which such proclamation, order, or notification may be issued or made.”* (emphasis added)

I have in **Hettiarachchi [supra]** examined the circumstances in which this power can be exercised. For the purposes of this application, it suffices to emphasize that any amendment, variation, rescinding or revocation must be by the same authority who made the notification, order or proclamation and in the same manner as it was originally made.

In this case, P8 was made by the Minister. Hence any amendment, variation, rescinding or revocation should be done by the Minister in the same manner as he did in making P8.

This is perhaps the reason why the Cabinet of Ministers did not, in R4 take any decision to vary, rescind or revoke P8.

Similarly, no evidence has been placed before Court of any decision of the Minister amending, varying, rescinding or revoking P8.

In fact, the Minister did not seek to do so. This is clear upon an examination of R5 sent by the Secretary to the Government Printer on 22.02.2020 which reads as follows:

“රජයේ මුද්‍රණාලයාධිපති,

රජයේ මුද්‍රණ දෙපාර්තමේන්තුව,

කොළඹ 08.

පළාත් පාලන ආයතන සංස්ථාපනයට අදාළ ගරු අමාත්‍යතුමාගේ නියමයන් රජයේ (අති විශේෂ) ගැසට් පත්‍රයේ පළකිරීම සඳහා අංක වෙන් කර ගැනීම.

උක්ත කරුණ සම්බන්ධයෙන් ඔබ වෙත එවන ලද මාගේ සමාංක හා 2020.02.14 දිනැති ලිපිය සම්බන්ධයෙනි.

කල්මුණේ මහා නගර සභාව විසුරුවා හරිමින් සායින්දමරුදු නගර සභාව සංස්ථාපනයට අදාළව මාගේ ගරු අමාත්‍යතුමා විසින් අත්සන් කර 2020.02.14 දින 2162/50 දරන අංකයෙන් රජයේ අති විශේෂ ගැසට් පත්‍රයේ පළකිරීම සඳහා ඔබ වෙත එවන ලද නියමයන් පිළිබඳව අමාත්‍ය මණ්ඩලය දැනුවත් කිරීම සඳහා 2020.02.19 වන දින ඉදිරිපත් කළ සටහන සලකා බලන ලද අමාත්‍ය මණ්ඩලය විසින් එම නියමය අවලංගු කරන ලෙස දැනුම් දී ඇත.

අදාළ සංස්ථාපන නියමය අවලංගු කිරීම සඳහා අවශ්‍ය ඉදිරි ක්‍රියාමාර්ග ගන්නා ලෙස මාගේ ගරු අමාත්‍යතුමා විසින් මා වෙත දැනුම් දී ඇති අතර, ඒ අනුව ඔබ වෙත එවා ඇති පූර්වෝක්ත නියමය පළකිරීම අවලංගු කරන ලෙස කාරුණිකව දැනුම් දෙමි.

එස්. හෙට්ටිආරච්චි

ලේකම්” (emphasis added)

I must state that the Secretary misconstrues R4 in stating that the Cabinet of Ministers had notified to cancel P8. No such decision was made.

In any event, the last paragraph clearly establishes that:

- (a) As at 22.02.2020, the Minister has not revoked or rescinded P8;
- (b) The Secretary has not (assuming he had the power) revoked or rescinded P8 on behalf of the Minister;
- (c) The Minister had wanted action taken to revoke the order;
- (d) The Secretary is requesting the Government Printer to cancel the publication of P8.

It appears that the Secretary had an abysmal understanding of the procedure that should be followed in cancelling P8. Removing P8 from the website of the Government

Printer does not amount to its revocation or cancellation. Notwithstanding its removal from the website, the order remains in force until cancelled according to law.

Mrs. Gangani Liyanage, Government Printer also appear to share the same abysmal understanding as she states in R6 that P8 has been removed from the website of the Government Printer and thereby P8 gets cancelled.

This letter R6 has been sent in response to a letter dated 01.07.2020 sent by the Secretary, However, the State has thought fit to suppress this letter dated 01.07.2020 from Court.

Nevertheless, the Government Printer does go on to state in R6 that if it is needed to “*further cancel*” P8, a Gazette notification cancelling P8 can be published in the General Gazette.

In response to R6, an Additional Secretary, writing on behalf of the Secretary informed the Government Printer to take steps to publish a Gazette Notification in the General Gazette to “*further cancel*” P8.

Consequently, the Government Printer published a notification in **Gazette No. 2192 dated 04.09.2020** which reads as follows:

“09-150

MINISTRY OF PUBLIC ADMINISTRATION, HOME AFFAIRS, PROVINCIAL COUNCILS & LOCAL GOVERNMENT

*NOTICE Nos. 02-641/1 and 02-641/2 published in Extraordinary Gazette No. 2162/50 dated 14.02.2020 **have been cancelled on 22.02.2020** on the orders given by the Cabinet of Ministers.*

Secretary,

Ministry of Public Administration, Home Affairs,

Provincial Councils & Local Government.

At Colombo, on 22nd February, 2020.” (emphasis added)

Hence the cancellation of P8, if at all, occurred on 22.02.2020. However, no such order of the Minister has been submitted to Court. In the absence of such evidence, I conclude that the Minister made no such cancellation.

The learned ASG sought to contend [para. 54 of written submissions] that the Secretary had in fact cancelled P8 by Gazette No. 2192 dated 04.09.2020. However, the Secretary has in that notification claimed that **P8 has been cancelled on 22.02.2020** and not that it is cancelled “hereby” or any variation thereof.

Moreover, all what has happened on 22.02.2020 is that the Secretary sent R5 to the Government Printer requesting the Government Printer to cancel P8. As clearly expounded earlier, she did not have the power to do so.

Accordingly, I hold that the communication of the Secretary does not amount to an unequivocal revocation or cancellation of P8.

In any event, assuming that the communication does so, I hold that it is not valid in law for the reasons set out below.

The learned ASG relied upon the *Carltona* principle to submit that it amounts to a valid revocation of P8 by the Secretary.

The *Carltona* principle was expounded by Lord Greene MR. in ***Carltona Ltd. v. Commissioner of Works [(1943) 2 All.E.R. 560 at 563]*** when he held:

"In the administration of government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could personally attend to them. To take the example of the present case no doubt there have been thousands of requisitions in this country by individual ministries. It cannot be supposed that this regulation meant that, in each case, the minister in person should direct his mind to the matter. The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the minister by responsible officials of the department. Public

business could not be carried on if that were not the case. Constitutionally, the decision of such officials is, of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority, and, if for any important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament. The whole system of departmental organisation and administration is based on the view that ministers being responsible to Parliament will see that important duties are committed to experienced officials. If they do not do that, Parliament is the place where complaint must be made against them. "

The *Carltona* principle, has been adopted and applied by our superior courts in ***M.S. Perera v. Forest Department and another* [(1982) 1 Sri.L.R. 187]** and ***Kuruppu v. Keerthi Rajapakse, Conservator of Forests* [(1982) 1 Sri.L.R. 163]**.

In *Perera* [supra] Sharvananda J. (as he was then) held (at page 192):

*"Constitutionally there is no delegation by the Minister to his officials. When an officer exercises a power or discretion entrusted to him, constitutionally and legally that exercise is the act of the Minister. If a decision is made on the Minister's behalf by one of his officials, then that constitutionally is the Minister's decision. It is not strictly a matter of delegation. It is that the official acts as the Minister himself and the official's decision is the Minister's decision. **When a Minister is entrusted with administrative as distinct from legislative functions, he is entitled to act by any authorised officer of his department.**"* (emphasis added)

However, in the present application, P8 is an exercise of subordinate legislative power by the Minister and therefore the *Carltona* principle has no application.

In any event, Section 18 of the Ordinance states that the revocation must be by the **same authority**. In this statutory context, the common law principle expounded in ***Carltona [supra]*** has no application.

The learned ASG has in support of his proposition cited a judgment of mine, ***Southern Provincial Co-Operative Employee's Service Commission v. Bentota Multi Purpose Co-operative Society Ltd. and Others*** [CA (PHC) 71/2013, C.A.M. 09.08.2018] delivered in the Court of Appeal. The facts differ. There, the publishing of the Statute in the Gazette under the hand of the Council Secretary of the Southern Provincial Council was characterized by me as administrative. Moreover, it did not involve the application of Section 18 of the Ordinance.

For all the foregoing reasons, I hold that as at the date this application was filed, P8 was valid and in force.

Time Bar

The 1st to 6th Respondents and the 14th and 15th Respondents has raised a preliminary objection that the application is time barred.

They contend that their decision not to call for nominations from the Sainthamaruthu Urban Council is incidental to the decisions to establish and revoke the Sainthamaruthu Urban Council, which took place in 2020. Therefore, they contend that their decision cannot be challenged in isolation, without visiting the merits of the aforesaid decisions.

The Respondents contend that since the Petitioners became aware of the Cabinet's decision not to proceed with the constitution of the Sainthamaruthu Urban Council as early as February of 2020, they should be time barred from making the present application. They have cited ***Demuni De Soysa and others v. Dharmasena Dissanayake*** [S.C.F.R. Application No.206/2008, S.C.M. 09.12.2016] to contend that the time period of one month should be computed from the date that the Petitioners became aware of the alleged infringement, and have gone on to cite numerous other

authorities such as ***Narendrakumar v. Ziyard and others*** [(2000) 1 Sri.L.R. 251] and ***K.H.G Kithsiri v. Hon. Faiszer Musthapa MP, Minister of Provincial Councils & Local Government*** [S.C.F.R. Application No. 362/2017, S.C.M. 10.01.2018] to support the strict application of the time bar.

Let me begin examining the time bar objection by focusing on the dates set out in P8.

In terms of P8, the Kalmunai Municipal Council became dissolved with effect from 19.03.2022. Pursuant to the other order contained in P8, Sainthamaruthu Urban Council became *constituted* with effect from 14.02.2020 and its term of office was to commence from 20.03.2022. There is a distinction between constituted and elected. Constitution means the establishment of a local authority. Elected means the election of members to a duly constituted local authority. The term of office of the members of the newly constituted Sainthamaruthu Urban Council was to commence on 20.03.2022.

The careful thinking that has gone into specifying different dates for the different events referred to above becomes clear upon an examination of the decision in ***Rathnayake Mudiyanseleage Ranjith Madduma Bandara v. K. M. Mahinda Siriwardana and others*** [S.C.F.R. Application No.69/2023, S.C.M. 22.08.2024].

On or around 10.02.2018, the Local Authorities Elections were held across the country (except in Elpitiya). On 10.02.2018, members were declared as elected to the Local Authorities (except in Elpitiya) in Sri Lanka. After the lapse of the 48 months, the terms of the said Local Authorities (except Elpitiya) were to expire on or about 08.03.2022. It is probably for this reason that the Minister made order in P8 dissolving the Kalmunai Municipal Council from 19.03.2022 so as not to disrupt the term of its elected members.

On or around 09.01.2022, the Minister extended the terms of Local Authorities that were due to expire in terms of relevant provisions in Municipal Council Ordinance,

Urban Council Ordinance and Pradeshiya Sabha Act, until 19.03.2023 by the Extraordinary Gazette Notification bearing No. 2262/2 dated 10.01.2022 [R10].

There was no reason for the Petitioners to have concluded that this action infringed their fundamental rights guaranteed by Articles 10, 12(1) or 14(1)(a) as in any event, the election to elect members to the Sainthamaruthu Urban Council was to take place only after the term of office of the then elected members of the Kalmunai Municipal Council came to an end.

As for Sainthamaruthu Urban Council, although P8 specified that the term of office of the members of the newly constituted Sainthamaruthu Urban Council was to commence on 20.03.2022, there was no need to include Sainthamaruthu Urban Council in R10 since there were no elected members whose term should have been extended similar to the term of office of all the members of all the other local authorities in the country. Its omission in R10 did not mean that P8 was cancelled or revoked.

Accordingly, I hold that there was no requirement for the Petitioners to have invoked the jurisdiction of this Court against R10. P8 was not in any way effected by R10.

In order to elect members for the Sainthamaruthu Urban Council, it was necessary to divide it into wards, determine the boundaries of each ward and assign a name and number to each ward.

This could have been done only after a proper delimitation process in terms of Sections 3B and 3C of the Local Authorities Elections Ordinance No. 53 of 1946 as amended (Ordinance) beginning with the National Delimitation Commission which was established on 03.11.2022 [R9]. Their term of office was initially specified to be 28.02.2023 which was extended to 19.03.2023 [R10].

None of the parties claim that the report of the recommendation of the said Commission has been published in the Gazette as required by Section 3C of the Ordinance. In the absence of such publication there was no way in which the

Petitioners could become aware that the delimitation process had not proceeded with the requirements to conduct elections to elect members to the newly constituted Sainthamaruthu Urban Council.

In any event, the Petitioners have sought a direction on the 7th to 11th Respondents to prepare a report and recommend to the 12th Respondent the division of the Sainthamaruthu Urban Council area and the Kalmunai Municipal Council area into wards in terms of Section 3B of the Local Authorities Elections Ordinance. This is an indication that the 7th to 11th Respondents have not done so as at the date of this application.

The failure to divide the Sainthamaruthu Urban Council area into wards and to determine the boundaries of each ward and assign a name and a number to each such ward was thus a continuing violation.

In ***Wijesekera and others v. Attorney General (The Demerger Case)*** [(2007) 1 Sri L.R 38] the denial of the right to have a Provincial Council constituted by an election of the members of such Council was considered a continuing infringement of the right to equal protection guaranteed by Article 12(1) of the Constitution.

The notion of a continuing violation was discussed at length by Marsoof, J. in ***Lake House Employees' Union v. Associated Newspapers of Ceylon*** [S.C.F.R. Application No. 637/2009, S.C.M. 17.12.2014]. While Court held the application to be time barred, it borrowed language from the United States' Supreme Court in defining a continuing violation as "a series of separate acts that collectively constitute" a single, continuing violation, and accordingly held that in such cases, the "cause of action accrues on the day on which the last component act occurred".

In ***Demuni Sriyani de Soyza*** [supra. at p. 15], Jayawardena, J., held that, with respect to a continuing violation, it should be asked till when did the alleged violation continue, and if the petition had been filed after more than one month from that date, whether the petitioner had "established that, they were unable to invoke the jurisdiction of this

Court due to circumstances which were beyond their control and that, there has been no lapse, fault or delay on their part.”

Accordingly, in both these judgments, the identifiability of a date of last occurrence is taken as a given, which may be justified when a series of discrete actions are considered as a continuing violation. However, an important distinction must be made with regard to continuing violations in terms of whether they relate to a series of discrete actions or to a single, continuing *omission*. In the former case, a last date is easily and concretely identifiable as the ‘critical date’ from which to compute the running of time.

Not so, in cases of *omissions*. When a continuing violation is complained of by virtue of an *omission*, the violation continues for as long as the omission continues. Starting from the moment the obligation *to act* accrues upon a party, until that party so acts, the would-be beneficiaries of that action can be said to be in continued deprivation of the benefits of that action. When the time between the accrual of the obligation to act and the action itself is of a reasonable duration, such as the time reasonably necessary to put into motion the relevant machinery of the State, there would invariably be no basis for a complaint of a violation of fundamental rights.

But, on the other hand, when an obligation to act has accrued, and time continues to elapse *ad infinitum* with no action in sight on the part of the party who is obliged to act, the violation of fundamental rights arising from that failure or omission can be said to be in continuance. Indeed, it may be that, in some instances, a petitioner sleeps on their rights for months or years while the inaction continues, and in such instances it would be relevant to consider whether the time elapsed between the accrual of the original obligation to act (or the date the petitioner became aware of such accrual) and the filing of a petition invoking our jurisdiction under Article 126 is of a reasonable duration. So long as the time taken to come to Court is not unreasonable in the circumstances of each case, the day the petition is filed would be within the time bar, because the violation continues for as long as the omission continues.

In ***Rathnayake Mudiyanseelage Ranjith Madduma Bandara*** [supra. page 52] Amarasekara, J. held:

“As far as the right to vote is delayed, there will be a continuing violation till it is exercised.”

The earliest time the Petitioners became aware that elections to the newly constituted Sainthamaruthu Urban Council will not take place is the publication of the Notice under Sections 27(E), 28(2), 28(2)(A), 28(2)(B) and 29(1)(A)(I)(II) of the Ordinance (P15) on 29.12.2022 setting out the number of candidates including the number of women candidates to be nominated for each ward of each Local Authority which did not have the necessary information for Sainthamaruthu Urban Council. This application has been filed on 11.01.2023.

For all the foregoing reasons, I hold that this application is not time barred.

Franchise

The existence of a statutory and constitutional right to franchise creates a legitimate expectation in the people of the country to elect members of their choice to Local Authorities, when an election becomes due [See ***Rathnayake Mudiyanseelage Ranjith Madduma Bandara (supra); Mohamed Hussain Hajjar and Others v. Election Commissioner of Sri Lanka and others*** [S.C.F.R. Application 35/2016, S.C.M. 15.12.2017].

The breach of this legitimate expectation by an arbitrary, malicious, illegal or capricious act or decision is a violation of the right to equality guaranteed by Article 12(1) of the Constitution [***Mohamed Hussain Hajjar (supra)***].

Thus, in the present case, the Petitioners, had a legitimate expectation that further steps will be taken in terms of the Ordinance to divide the Sainthamaruthu Urban Council area into wards and to determine the boundaries of each ward and assign a name and a number to each such ward.

This Court has also long recognized that the freedom of speech and expression guaranteed under Article 14(1)(a) of the Constitution extends to the freedom to vote [*Karunathilake and another v. Dayananda Dissanayake, Commissioner of Elections and others* [[1999] 1 Sri LR 157 at 174], *Mediwake and others v. Dayananda Dissnayake, Commissioner of Elections and others* [(2001) 1 Sri.LR. 177], *Thavaneethan v. Dayananda Dissanayake, Commissioner of Elections and others* [(2003) 1 Sr.L.R. 74 at 90], *Rathnayake Mudiyanseelage Ranjith Madduma Bandara v. K. M. Mahinda Siriwardana and others* [supra], *Local Authorities Elections (Special Provisions) Bill* [S.C.S.D Application Nos. 01-04/2025]]. This is because, as explained in *Karunathilake* [supra], the secret indication of a citizen's preference of a candidate by casting a vote is also a form of expression.

Court has also extended Article 14(1)(a) to include the freedom to vote in Local Government elections [*Rathnayake Mudiyanseelage Ranjith Madduma Bandara* (supra), *Mohamed Hussain Hajjar and Others* (supra)].

The failure to divide the Sainthamaruthu Urban Council area into wards and to determine the boundaries of each ward and assign a name and a number to each such ward was thus a clear breach of the freedom to vote guaranteed by Article 14(1)(a).

The Petitioners have also argued that the denial of the opportunity to vote at the Local Government election, constitutes a violation of Article 10 of the Constitution. However, as recognized by *Rathnayake Mudiyanseelage Ranjith Madduma Bandara v. K. M. Mahinda Siriwardana and others* [supra], Article 10 relates to a person's freedom to have or adopt a belief according to his or her own choice, and regardless of whether opportunity is provided to vote at an election this freedom of choice will remain.

Therefore, in the present case the denial of the opportunity to vote at the Local Government election cannot be considered a violation of Article 10.

It is clear that the 7th to 11th Respondents had not completed the delimitation at the time this application was filed. Therefore, I am unable to impute any liability on these Respondents for the infringement.

The 1st to 6th Respondents and the 14th and 15th Respondents has vehemently argued that they made the decision to not call for nominations, and consequently refrain from holding Local Government elections for the Sainthamaruthu Urban Council, as they reasonably believed that the decision to create the Urban Council had been revoked. Although this is an erroneous assumption on their part, liability for the infringements cannot be imputed to them as in the absence of a delimitation process, they could not in any event have conducted an election to elect members to the Sainthamaruthu Urban Council.

For all the forgoing reasons, I hold that the State has infringed the fundamental rights of the Petitioners guaranteed by Articles 12(1) and 14(1)(a) of the Constitution by failing to divide the Sainthamaruthu Urban Council area into wards and to determine the boundaries of each ward and assign a name and a number to each such ward and conduct elections to elect members to the Sainthamaruthu Urban Council.

in the exercise of the just and equitable jurisdiction of Court, I make the following declarations and directions:

- (i) I declare that P8 is valid and in force as at the date of this judgment;
- (ii) I declare that the Sainthamaruthu Urban Council remains validly constituted;
- (iii) I declare that P15 in so far as it relates to the Kalmunai Municipal Council and all consequential orders, notices and publications relating to the Kalmunai Municipal Council made under and in terms of the Ordinance are null and void;

- (iv) I direct the 12A Respondent to take steps to conduct a delimitation process according to law for the Municipal Council of Kalmunai and Sainthamaruthu Urban Council with a view to, *inter alia*, dividing them into wards and to determine the boundaries of each ward and assign a name and a number to each such ward. This will include the establishment of a National Delimitation Committee (National Committee) in terms of Section 3A of the Ordinance for such purpose;
- (v) The National Committee established pursuant to the above direction shall complete its task within two months of its establishment and submit a report on its recommendations to the 12A Respondent or his successor;
- (vi) The 12A Respondent or his successor upon the receipt of the report on the recommendations of the National Committee, shall forthwith submit such report on the recommendations to the President in terms of Section 3C of the Ordinance;
- (vii) The President, who is represented in this application by the Hon. Attorney-General in accordance with the proviso to Article 35(3) of the Constitution, shall by Order published in the Gazette, publish the number of wards, the boundaries, names, number or the alphabetical letter assigned to each ward so created on the recommendations made by the National Committee in respect of the Kalmunai Municipal Council and Sainthamaruthu Urban Council;
- (viii) I direct the 1A to 5A Respondents to take steps in accordance with the law subsequent to the process stipulated above to conduct elections to appoint members to the Kalmunai Municipal Council and Sainthamaruthu Urban Council.

Application partly allowed.

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath B. Abayakoon, J.

I agree.

JUDGE OF THE SUPREME COURT