

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

SC/FR/Application No: 90/2023

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

1. Dr. Harini Amarasuriya
Member of Parliament,
No. 33B, Janatha
Mawatha,
Kotte
2. Sunil Handunneththi,
No. 92/3, Paasal Mawatha,
Rukmale,
Pannipitiya.
3. Dr. M.R. Nihal Abeysinghe
No. 134A, St. Saviour Road,
Ja-Ela.

PETITIONERS

Vs.

1. K. M. Mahinda Siriwardena
Secretary to the Ministry of
Finance
Ministry of Finance
Colombo-01.
2. Hon. Attorney General
Attorney General's
Department
Colombo 12.

*(Named as a Respondent in
terms of the First Proviso
to Article 35(1) of the
Constitution)*

3. G. K. D. Liyanage
Government Printer
Department of Government
Printing
No. 118, Dr Danister De Silva
Mawatha,
Colombo 08
4. Inspector General of Police
Police Headquarters
Colombo 01.
5. Neil Bandara Hapuhinna
Secretary
Minister of Public
Administration
Home Affairs
Provincial Councils
and Local Government
Independence Square
Colombo 07.
6. Nimal Punchihewa
Chairman,
The Election Commission,
Elections Secretariat,
Sarana Mawatha,
Rajagiriya.
7. S. B. Divarathne
Member
8. M. M. Mohammed
Member
9. K. P. P PAthirana
Member

6th to 9th Respondents are
all of:

The Election Commission,
Elections Secretariat,
Sarana Mawatha,
Rajagiriya

10. P. S. M. Charles
(Former Member of the Election
Commission)
1/8, Blue Ocean Apartments,
No. 5, Railway Avenue,
Nugegoda.
11. Saman Sri Rathnayake
Commissioner of General of
Elections, Elections Secretariat
No. 02, Sarana Mawatha,
Rajagiriya
12. Director General of
Government Information
Department of Government
Information
163, Kirulapana Avenue,
Colombo 06.
13. Tiran Alles
Minister of Public Security
14th Floor,
Suhurupaya,
Battaramulla
14. Dinesh Gunawardena,
Prime Minister and the
Minister of Public
Administration, Home Affairs
Provincial Council and
Local
Government,
Independence Square,
Colombo 07.

15. Nimal Siriplala De Silva
Minister of Ports,
Shipping
and Aviation,
No. 19, Chaithya Road,
Colombo 01.
16. Susil Premajayantha,
Minister of Education
Isurupaya,
Battaramulla
17. Pavithra Devi Wanniarachchi
Minister of Wildlife and
Forest
Resource Conservation,
No. 1090,
Sri Jayawardenapura
Mawatha, Rajagiriya
18. Douglas Devananda
Minister of Fisheries
New Secretariat
Maligawatta, Colombo 10.
19. Bandula Gunawardena
Minister of Mass Media
Minister of Transport and
Highways
9th Floor,
“Maganeguma Medura”
Denzil kobaddkaduwa
Mawatha,
Koswatta, Battaramulla.
20. Keheliya Rambukwella
Minister of Health
“Suwasiripaya”
No. 385,
Baddegama
Wimalawansa
Thero Mawatha,
Colombo 10.

21. Mahinda Amaraweera
Minister of Agriculture
No.80/5,
“GovijanaMandiraya”,
Rajamalwatta road
Battaramulla
22. Wijeyedasa Rajapaksa
Minister of Justice,
Prison Affairs and
Constitutional Reforms,
No.19, Sri Sangarja
Mawatha, Colombo 10.
23. Harin Fernando,
Minister of Tourism and
Lands,
2nd Floor, Assets Arcade
Building,
51/2/1, York street
Colombo 1.
24. Ramesh Pathirana
Minister of Industries,
Minister of Plantation
Industries,
11th Floor, Stage II,
“Sethsiripaya”,
Battaramulla.
25. Prasanna Ranatunga,
Minster of Urban
Development and Housing
17th Floor,
“Suhurupaya”,
Sri Subhuthipura road,
Battaramulla.
26. Ali Sabry,
Minister of Foreign Affairs
Republic Building,
Sir Baron Jayathilaka
Mawatha, Colombo 01.

27. Vidura Wickramanayake,
Minister
Buddhasasana,
Religious and Cultural
Affairs,
No.135,
SrimathAnagarika
Dharmapala Mawatha,
Colombo 07
28. Kanchana Wijesekara,
Minister of Power
and Energy,
No. 437,
Galle road,
Colombo 03
29. Nazeer Ahamed,
Minister of Environment,
No. 416/C/1,
“SobadamPiyasa”,
Robert Gunawardena
Mawatha,
Battaramulla
30. Roshan Ranasinghe,
Minister of Sports and
Youth Affairs,
Minister of Irrigation,
No.500,
10th Floor,
T B Jaya Mawatha,
Colombo 10
31. Manusha Nanayakkara,
Minister of Labour and
Foreign Employment,
6th Floor,
“Mehewara Piyasa”,
Narehenpita, Colombo 05
32. Nalin Fernando,
Minister of Trade,
Commerce and Food,

Security,
No.492,
L H Piyasena Building
R A De Mel Mawatha,
Colombo 12.

33. Jeevan Thondaman,
Minister of Water Supply
and Estate Infrastructure
Development,
No.35,
“LakdayaMedura”,
New Parliament Road,
Pelawatta,
Battaramulla

34, Secretary to the cabinet of
Ministers
Office of the Cabinet of
Ministers,
Republic building,
Sir Baron Jayathilaka
Mawatha,
Colombo 01.

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

RESPONDENTS

AND

SC/FR/Application No: 139/23

1. People's Action for Free and
Fair Elections (PAFFREL)
No. 16, Byrde Place,
Off Pamankada Road,
Colombo 06.
2. Rohana Nishantha
Hettiarachchi
Executive Director

People's Action for Free and
Fair Elections (PAFFREL)
No. 16, Byrde Place,
Off Pamankada Road,
Colombo 06.

PETITIONERS

Vs.

3. Hon. Attorney General
Attorney General's
Department
Colombo 12.
4. Hon. Dinesh Gunawardena
Hon. Prime Minister and
Minister of Public
Administration,
Home Affairs, Provincial
Councils and
Local Government
Prime Minister's Office,
No. 58, Sir Ernest De Silva
Mawatha,
Colombo 07.
3. Hon. Nimal Siripala De Silva,
Minister of Ports, Shipping
and Aviation
4. Hon. (Mrs.) Pavithra Devi
Wanniarachchi
Minister of Wildlife & Forest
Resources conservation.
5. Hon. Douglas Davananda
Minister of Fisheries
6. Hon. Susil Premajayantha
Minister of Education

7. Hon. (Dr.) Bandula
Gunawardena
Minister of Transport
and Highways and
Minister of Mass Media
8. Hon. Keheliya Rambukwella
Minister of Health
9. Hon. Mahinda Amaraweera
Minister of Agriculture
10. Hon. (Dr.) Wijayadasa
Rajapaka, PC
Minister of Justice, Prison
Affairs and
Constitutional Reforms
11. Hon. Harin Fernando
Minister of Tourism and
Lands.
12. Hon. (Dr.) Ramesh Pathirana
Minister of Plantation
Industries and
Minister of Industries.
13. Hon. Prasanna Ranatunga
Minister of Urban
Development and Housing.
14. Hon. Ali Sabry, PC
Minister of Foreign Affairs
15. Hon. Vidura
Wickramanayaka
Minister of Buddhasasana,
Religious and Cultural
Affairs.
16. Hon. Kanchana Wijesekara
Minister of Power and Energy

17. Hon. Nazeer Ahamed
Minister of Environment
18. Hon. Roshan Ranasinghe
Minister of Irrigation and
Minister of Sports and
Youth Affairs
19. Hon. Manusha Nanayakkara
Minister of Labour and
Foreign Employment
20. Hon. Tiran Alles
Minister of Public Security
21. Hon. Nalin Fernando
Minister of Trade, Commerce
and Food Security
22. Hon. Jeevan Thonaman
Minister of Water Supply and
Estate Infrastructure
Development

*All of the above 3rd to 22nd
Respondents are of:*

Office of Secretary to the
Cabinet of Minister,
Lloyd's Building,
Sir Baron Jayathilaka
Mawatha,
Colombo 01.

23. Mr. W. M. D. J. Fernando
Office of Secretary to the
Cabinet of Ministers,
Lloyd's Building,
Sir Baron Jayathilaka
Mawatha,
Colombo 01.

24. Mr. K. M. Mahinda
Siriwardana

Secretary to the Treasury and
Secretary to the Ministry of
Finance, Economic
Stabilization and National
Policy,
Ministry of Finance,
The Secretariat, Colombo 01.

25. Mr. Neel Bandara
Hapuhinne
Secretary to the Ministry of
Public Administration,
Home Affairs,
Provincial Councils and Local
Government,
Independence Square,
Colombo 07.

26. Mr. P. V. Gunatillake
Secretary to the Ministry of
Public Security,
14th Floor, “Suhurupaya”,
Battaramulla.

27. Mrs. G. K. D. Liyanage
Government Printer,
Department of Government
Printing,
No 118, Dr. Danister de Silva
Mawatha,
Colombo 08.

28. Mr. C. D. Wickramaratne
Inspector General of Police,
Police Headquarters,
Colombo 01.

29. S.R. W. M. R. P. Sathkumara
Postmaster General
Post Head Quarters,
No. 310, D. R. Wijewardana
Mawatha, Colombo 01.

30. Nimal G. Punchihewa
Chairman-Election
Commission

31. S. B. Divaratne

32. M. M. Mohamed

33. K. P. P. Pathirana

*the 31st to 33rd Respondents,
Members of the Election
Commission*

34. Saman Sri Ratnayake
Commissioner- General of
Elections

*the 30th to 34th Respondents
are of:
Elections Secretariat, Sarana
Mawatha, Rajagiriya*

RESPONDENTS

Before: Buwaneka Aluwihare PC, J
Priyantha Jayawardena PC, J
Vijith Malalgoda PC, J
Murdu N.B. Fernando PC, J
E.A.G.R. Amarasekara, J

Counsel: Nigel Hatch PC with Shantha Jayawardena, Sunil Watagala, Ms. S. Illangage and
Hiranya Damunupola for the Petitioners in SC/FR/90/2023

Priyantha Nawana PC, SASG, with Ms. Sabrina Ahamed, SC for the, 1st - 3rd, 13th, 15th,
33rd, 34th and 35th Respondents in SC/FR/90/2023 and for the 1st, 2nd, 22nd, 23rd, 24th,
27th and 28th Respondents in SC/FR/139/2023

Faisz Musthapha PC with Ms. Faisza Marker, Hafeel Faris and Bishran Iqbal for the 14th Respondent in SC/FR/90/2023

Asthika Devendra with Kaneel Maddumage and Wasantha Sandaruwan for the Petitioners in SC/FR/139/2023

Argued: 9th June, 2023

Decided: 27th June, 2023

Priyantha Jayawardena PC, J

I have considered the draft Order of the aforementioned applications prepared by Justice Buwaneka Aluwihare PC and;

- (i) I agree with the conclusion of the said Order with regard to the preliminary objection raised by the learned Senior Additional Solicitor General in the above applications,
- (ii) However, I am afraid I am not in agreement with the reasoning and the conclusion in respect of the preliminary objection raised by the learned President's Counsel for the 14th respondent in SC/FR/90/2023 with regard to the jurisdiction of this court.

Hence, my reasoning and the decision on the said preliminary objections are stated below.

These applications were filed by the petitioners, alleging that their Fundamental Rights have been violated by not holding the Local Authorities Elections on the 9th of March, 2023 as scheduled by the Election Commission.

The learned Senior Additional Solicitor General who appears for the 1st, 2nd, 22nd, 23rd, 27th and 28th respondents in SC/FR/139/2023 and the 1st, 2nd, 3rd, 13th, 15th to 33rd, 34th and 35th respondents in SC/FR/90/2023 raised the following preliminary objection:

‘the petitioners have failed to name a necessary party to the instant applications.
Particularly, though the Chairman and the members of the Election Commission

are named in the petitions as respondents, the petitioners have failed to name the Election Commission as a party to the petitions. Thus, the said applications should be dismissed in *limine*'

He submitted that there is a clear distinction between the Election Commission and its members, and therefore, the activities of the members of the commission cannot be considered as actions of the said commission. Thus, the Election Commission is a necessary party to any litigation filed in respect of matters relating to the said commission.

The learned Senior Additional Solicitor General further submitted that, though the Constitution does not specifically state that the Election Commission has a legal personality, the Constitution has given a legal status to the Election Commission by implication. Therefore, the Election Commission is a necessary party to the instant application. In this regard, the learned Senior Additional Solicitor General drew the attention of court to section 2(s) of the Interpretation Ordinance, which states;

“Person” includes any body of persons corporate or unincorporate”

Further, he cited The Law of Contracts by C.G. Weeramantry at page 529, where it stated;

“Quasi Corporations. There are in existence many entities, which, though not corporations or legal personae strictly so called, still enjoy many of the attributes of corporate personality. Thus, many unincorporated associations are capable of a continuous existence in spite of periodical changes in their composition, although the state does not confer on them the gifts of legal personality.”

In the circumstances, he submitted that the Election Commission should be considered as an institution that has acquired legal status, and therefore, it must be named as a party to the instant applications. Thus, the failure to name the Election Commission as a party to the instant application is fatal, and thus, the application should be dismissed in *limine*.

The learned President's Counsel appearing for the petitioners in SC/FR Application No. 90/2023 and the counsel appearing in SC/FR Application No. 135/2023 submitted that the independent commissions have been created by or under the Constitution. In this regard, they drew the attention of court to the Public Service Commission, National Police Commission, etc. and submitted that the said commissions have no independent legal status, and therefore, the cases are filed against the members of those commissions.

Furthermore, as the Election Commission does not have a legal personality, it cannot be made a party to a case filed in court. Thus, the petitioners have made the members of the Election Commission parties to the instant applications. Hence, they submitted that the said preliminary objection should be overruled.

In addition to the above preliminary objection, the learned President's Counsel appearing for the 14th respondent in application No. SC/FR/90/2023 raised the following preliminary objection;

‘The Supreme Court lacks jurisdiction to hear the said applications’

In this regard, he submitted that the allegations averred in the petition are before Parliament, and therefore, the Supreme Court has no jurisdiction to entertain the said application. He drew the attention of court to paragraph 32 of the petition, the newspaper article annexed and produced as P20(a), the press release marked and produced as P21 and the Hansard dated 23rd of February, 2023 filed by the petitioner in application No. SC/FR/90/2023. Thus, he moved for a dismissal of the said application in *limine*.

Responding to the above objection, the learned President's Counsel for the petitioner in SC/FR/90/2023 submitted that the subject matter of the petition is not before the Parliament and therefore, the Supreme Court can proceed with the instant application. He further submitted that, in any event, there is no legal impediment for the court to consider a matter that is pending before Parliament and cited the instance where, while the impeachment proceeding was taking place to impeach the former Chief Justice Shirani Bandaranayaka, the Supreme Court heard the cases that were filed challenging the said impeachment proceedings. In this regard, he cited the judgment delivered by Justice Saleem Marsoof PC in S.C. Application No. 665/2012 (FR), S.C. Application No. 666/2012 (FR), S.C. Application No. 667/2012 (FR) and S.C. Application No. 672/2012 (FR).

Is the Election Commission a necessary party to the petition

Rule 44 Supreme Court Rules *inter alia* states;

“44. (1) Where any person applies to the Supreme Court by a petition in writing, under and in terms of Article 126(2) of the Constitution, for relief or redress in respect of an infringement or an imminent infringement, or any fundamental right or language right, by executive or administrative action, he shall –

(a) set out in his petition a plain and concise statement of the facts and circumstances relating to such right and the infringement or imminent infringement thereof, including particulars of the executive or administrative action whereby such right has been, or is about to be, infringed; where more than one right has been, or is about to be, infringed, the facts and circumstances relating to each such right and the infringement, or imminent infringement thereof shall be clearly and distinctly set out. He shall, also refer to the specific provisions or the Constitution under which any such right is claimed.

(b) name as respondents the Attorney-General and the person or persons who have infringed, or are about to infringe, such right;

[emphasis added]

Hence, Rule 44(1)(b) of the Supreme Court Rules requires to name the persons who infringed or are about to infringe the Fundamental Rights, in petitions filed under Article 126(2) of the Constitution. Thus, it needs to be considered whether the Election Commission is a necessary party to the above applications.

Establishment of the Election Commission

The Election Commission was established by Article 103 of the Constitution. Article 103 of the Constitution, *inter alia*, states; “There shall be an Election Commission (in this Chapter referred to as the “Commission”) consisting of five members appointed by the President.....”

Further, Article 104B(1), *inter alia*, states that the Commission shall exercise, perform and discharge all such powers, duties and functions conferred or imposed on or assigned to the Commission; or to the Commissioner-General of Elections, by the Constitution, and by the law.

(a) Does the Election Commission have a legal personality

The law recognises natural persons and legal persons. A legal person is a fiction created by the law. Further, a legal fiction that has legal status can be created only by an Act of Parliament or under a law passed by Parliament. However, the courts have no power to create a legal personality by reading words into a provision in the law.

Moreover, a legal person created by law is distinct from the natural persons who are its members. The powers of a legal person are conferred by law at the time it is created. e.g. the power to sue and be sued. Further, no legal proceedings can be instituted against a non-incorporated body, as the law has not conferred power to sue or be sued by such a body. A similar view was also expressed in ***Divisional Forest Officer v Sirisena* [1990] 1 SLR 44 at page 49**, where it was held;

*“The other ground on which the Appellant relied was that the Defendant to this action was not a legal person and that the action could, therefore, not have been maintained against the Defendant named in the plaint. As is evident from the plaint, the Defendant has been described as the Divisional Forest Officer, Southern Division, Galle. It is submitted that the Defendant so described is not a statutory functionary who could be sued as a Corporation Sole. In *The Land Commissioner v. Ladamuttu Pillai* it has been held by the Privy Council that Land Commissioner is not a Corporation Sole. So also, in *Singho Mahatmaya v. The Land Commissioner* the Supreme Court has held that the Land Commissioner cannot be regarded as a Corporation Sole and, therefore, cannot be sued nomine officii.”*

[emphasis added]

(b) Interpretation of Article 103 of the Constitution

The constitutional provisions should always be interpreted to protect the rights enshrined in the Constitution and not to deny them by applying a narrow interpretation. A similar view was expressed in ***Ramadhari Mandal v Nilmoni Das* AIR 1952 Cal 184**, where it was held;

“Constitutional provisions are not to be interpreted and crippled by narrow technicalities but as embodying the working principles for practical Government. The Constitution is not the home for legal curiosities.”

[emphasis added]

Further, in ***Edirisuriya v Navaratnam* [1985] 1 SLR 100 at page 106**, the Supreme Court held;

“A solemn and sacred duty has been imposed by the Constitution upon this Court, as the highest Court of the Republic, to safeguard the fundamental rights which have been assured by the Constitution to the citizens of the Republic as part of their

intangible heritage. It, therefore, behooves this Court to see that the full and free exercise of such rights is not impeded by any flimsy and unrealistic considerations.”

In ***Velupillai v The Chairman, Urban District Council*** 39 NLR 464, Abrahams CJ held;

“This is a court of Justice, it is not an Academy of Law.”

Further, the aforementioned objection raised by the learned Senior Additional Solicitor General should be considered in light of the established principles of interpretation of Constitutions whilst giving effect to the Fundamental Rights of the people enshrined in the Constitution and the *curses curie est lex curiae*.

The Constitution has established the Election Commission, the Public Service Commission, the National Police Commission, the Audit Service Commission, the Finance Commission, the Delimitation Commission, and the National Procurement Commission.

However, it is pertinent to note that the Constitution has not established the Commission to Investigate Allegations of Bribery or Corruption. On the contrary, it has made provision for the Parliament to enact legislation to establish a Commission to Investigate Allegations of Bribery or Corruption.

Upon a careful reading of Article 103 of the Constitution, it is evident that the Election Commission has not been created as a Corporate Sole by the legislature, nor is it stated that it may sue or be sued in a corporate name. Furthermore, Article 103 does not seem to reveal any intention of the legislature to incorporate the Election Commission as a legal person. When applying the literal interpretation to interpret a provision in law, the court should give full effect to the language used by the legislature. If the language of the legislature is clear and unambiguous, the court cannot read words into the Act in interpreting the same. Further, where the language is plain, the task of interpretation will not arise.

A similar view was expressed in ***Somawathie v Weerasinghe*** [1990] 2 SLR 121 at page 124, where it was held;

“How should the words of this provision of the Constitution be construed? It should be construed according to the intent of the makers of the Constitution. Where, as in the Article before us, the words are in themselves precise and unambiguous and

there is no absurdity, repugnance or inconsistency with the rest of the Constitution, the words themselves do best declare that intention. No more can be necessary than to expound those words in their plain, natural, ordinary, grammatical and literal sense.”

(c) *Cursus curiae est lex curiae* (The practice of the court is the law of the court)

As the Public Service Commission, the National Police Commission, etc. were not created as legal persons that can sue and be sued, a *cursus curiae est lex curiae* has been developed in Sri Lankan courts that legal proceedings can be instituted against the members of such commissions. In this regard, it is pertinent to note that it has been the practice of this court to entertain not only the Fundamental Rights Applications filed against the members of the Election Commission but also to entertain Writ Applications filed against the members of some of the said commissions under the Constitution.

Broom’s Legal Maxims (10th Edition) at page 82 states;

“Every Court is the guardian of its own records and master of its own practice”; and where a practice had existed it is convenient, except in cases of extreme urgency and necessity to adhere to it, because it is the practice, even though no reason can be assigned for it; for an inveterate practice in the law generally stands upon principles that are founded in justice and convenience.”

Further, in ***Jeyraj Fernandopulle v De Silva and Others* [1999] 1 SLR 83**, Amerasinghe, J held;

“Cursus curiae est lex curiae. The practice of the court is the law of the Court. Wessels, J in Wayland v Transvaal Government, held that it is no argument to say that there was no actual contested case in which this procedure has been laid down; for a course of procedure may be adopted and hold good even though there has been no decision on the point. However, in Sri Lanka the practice of the Court has been recognized in judgments of the Court.

The practice of the Court in these matters is in accordance with the conventions of judicial comity.”

Thus, for the reasons stated above, I am of the opinion that the petitioners are entitled to name the members of the Election Commission as respondents by following the *cursus curiae* of the court.

(d) Applicability of the Interpretation Ordinance to Constitutional Interpretation

The Constitution states that it is the Supreme Law of the Republic. Thus, other laws cannot be used to interpret the provisions of the Constitution, as they are subordinate to the Constitution. On the contrary, the other laws should be interpreted to be consistent with the provisions of the Constitution.

In SC Reference 01/2014, it was observed; “..... the rules pertaining to Constitutional interpretation are different to those of statutory interpretation. In this context, it is relevant to quote His Lordship Justice Sharvananda CJ in his publication on Fundamental Rights in Sri Lanka (Arnold’s International Printing House), 1993 at page 43, in the following terms;

“Though the Interpretation Ordinance does not apply to the Interpretation of the provisions of the Constitution, as the Constitution was enacted in the exercise of Constitutional power and not in the exercise of legislative power of Parliament and hence is not written law within the meaning of section 2 of the Interpretation Ordinance, it may legitimately be referred to, to appreciate the concept of ‘person’ in our law.”

[emphasis added]

(e) Applicability of the principals in other laws to Constitutional Interpretation

Further, as stated above, since the Constitution is the supreme law of the country, it is not possible to apply the principles of interpretation of other laws to interpret the Constitution. A similar view was expressed in ***Julliard v Greenman* 10 US 421 at page 439**, where it was held;

“A Constitution is not to be interpreted with the strictness of private contract. The Constitution of the United States, by apt words of designation or general description, marks the outlines of the powers granted to the national legislature; but it does not undertake, with the precision and detail of a Code of laws, to

enumerate the sub-division of those powers, or to specify all the means by which they may be carried into execution.”

[emphasis added]

Therefore, I am not inclined to agree that the Election Commission has been conferred with legal status directly or by necessary implication. Hence, I hold that the Election Commission is not a corporate sole. Further, the petitioners are not in breach of Rule 44 of the Supreme Court Rules as the Election Commission does not have an independent legal status from its members. Therefore, the aforesaid preliminary objection raised by the learned Senior Additional Solicitor General is overruled.

DOES THE COURT LACK JURISDICTION TO HEAR THE APPLICATION

The learned President’s Counsel appearing for the 14th respondent in SC/FR/90/2023 drew the attention of court to paragraph 32 of the petition filed in SC/FR/90/2023, the press release dated 24th of February, 2023 produced marked as ‘P21’ and the Hansard dated 23rd of February, 2023 marked and produced as ‘P20(b)’ and submitted that the subject matter of the said application is now before the Parliament and therefore, this court has no jurisdiction to hear the said application.

The said paragraph 32 states;

“The petitioners state that on 24.02.2023 the Election Commission released a press release informing of two decisions made by the Election Commission at its meeting held on 24.02.2023, namely (1) that for reasons beyond the control of the Election Commission the local authorities election will not be held on 09.03.2023 and a fresh date for the election would be notified on 03.03.2023 and (2) that to make a request to the Speaker of Parliament to intervene to obtain finances from the Treasury for the conduct of the election.

A true copy of the said press release dated 24.02.2023 was annexed to the petition marked as P21 and pleaded as part and parcel hereof.”

The said press release stated *inter alia* as follows;

“2023.02.24 දින රැස් වූ මැතිවරණ කොමිෂන් සභාව මතු දැක්වෙන
නීරණ ගෙන ඇති බව මෙයින් නිවේදනය කරනු ලැබේ

2023.03.09 දිනට පැවැත්වීමට නියමිත පළාත් පාලන ආයතන ඡන්ද විමසීම සම්බන්ධව මැතිවරණ කොමිෂන් සභාව විසින් වියවස්ථාපිතව සිදුකළ කාර්යයන් පිළිබඳව තොරතුරු ඇතුළත් වාර්තාවක් සමඟ ඡන්ද විමසීම සඳහා අවශ්‍ය මුදල් ප්රතිපාදන භාණ්ඩාගාරය වෙතින් ලබා ගැනීම සඳහා මැදිහත් වන ලෙස ඉල්ලීමක් ශ්රී ලංකා පාර්ලිමේන්තුවේ ගරු කථානායකතුමා වෙත ඉදිරිපත් කිරීම;

මැතිවරණ කොමිෂන් සභාවේ පාලනයෙන් බැහැරව පැන නැඟී ඇති කරුණු හේතුවෙන් 2023.03.09 දිනට පැවැත්වීමට නියමිත පළාත් පාලන ආයතන ඡන්ද විමසීම එදිනට නොපැවැත්වෙන අතර, එම ඡන්ද විමසීම පැවැත්වෙන දිනය පිළිබඳව 2023.03.03 දින ප්රකාශයට පත් කිරීම;

මැතිවරණ කොමිෂන් සභාවේ නියමය පරිදි"

[emphasis added]

Further, the learned President's Counsel referred to the newspaper article dated 24th of February, 2023 marked and produced as P20(a), which *inter alia* stated as follows;

"The Parliament has asked to appoint a select committee on this matter. So I request to appoint it, record all and take the report to the Supreme Court. According to section 4 of the Constitution, the financial power is vested in the Parliament. After the 1688 Revolution according to the Magna Carter Agreement, all monetary powers vested in Parliament. Therefore, given that report to Supreme Court through a select committee."

Further, after the Order on the preliminary objection was reserved by court, the Instructing Attorney for the said 14th respondent filed a motion dated 22nd of June, 2023 and furnished a copy of the "ADDENDUM TO THE ORDER BOOK No. 1 OF PARLIAMENT" issued on the 15th of February, 2023 which contained, *inter alia*, the following;

"ADDENDUM TO THE ORDER BOOK No. 1

OF

PARLIAMENT

Issued on Wednesday, February 15, 2023

NOTICE OF MOTIONS FOR WHICH NO DATES HAVE BEEN FIXED

And whereas the Election Commission is responsible to Parliament under Article 104B (3) of the Constitution;

And whereas by Article 30(4) of the Twenty First Amendment to the Constitution the members of the Commission have ceased to hold office and are exercising and discharging of powers and functions of the transitional members;

And whereas on 18th January 2023 the Election Commission purported to call nominations for the Local Authorities Elections;

And whereas two members of the Commission decided to fix 09th March 2023 as the date of polling and claimed to have obtained the consent of the other three members;

And whereas the Secretary to the Ministry of Finance, Economic Stabilization and National Policies has filed an Affidavit in Court stating that it would be challenging to find funds for holding such an election in March 2023;

And whereas there is a question of whether the Commission itself is satisfied that all preconditions for holding such an election are fulfilled;

And whereas on 25th January 2023 Ms. P. S. M. Charles member of the Commission tendered her resignation to the President;

And whereas the Commission has failed to report to Parliament which is responsible for public finance on issues that have arisen on Local Authorities Elections;

And whereas if the privileges of the Members of Parliament and of the Parliament have been infringed, it should be investigated into and suitable recommendations in that regard should be made;

This Parliament resolves that a Select Committee of Parliament be appointed to investigate into the matters relating to the Election Commission in respect of the incidents of infringement of privileges of the Members of Parliament and of the Parliament and to make suitable recommendations in that regard.

2.

3.

4.”

I have considered the aforementioned preliminary objection raised by the learned President’s Counsel for the 14th respondent in SC/FR/90/2023 and the submissions made by the learned President’s Counsel who is appearing for the petitioners in SC/FR/90/2023, and I am of the view that if the subject matter of a court case is pending before the Parliament, the courts have no jurisdiction to hear and determine such a case in terms of section 3 of the Parliamentary (Powers and Privileges) Act read with Article 67 of the Constitution. A similar view was expressed by Justice Marsoof PC in the aforementioned Fundamental Rights Applications. However, there are no sufficient materials before this court to consider the merits of the said preliminary objection. Further, the said preliminary objection should be considered after hearing all the parties in the application. Thus, I am not inclined to uphold the said preliminary objection. However, the said respondent has the liberty to raise the said objection if leave is granted by court after hearing the merits of the said application.

Judge of the Supreme Court