

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

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

SC FR No. 925/2009

1. L.M.S.P. Pitawala,
Technical College, Nuwara Eliya.
2. E.A.N.D. Edirisinghe
Technical College, Aruppola, Kandy.
3. W. Kamal Gunarathna
Technical College, Aruppola, Kandy.
4. K.M. Senivirathna
Technical College, Aruppola, Kandy.
5. W.M. Ranathunga
Technical College, Badulla.
6. I.S.K. Jayarathna
Technical College, Kegalle.
7. H.P.H. Wickramarathna
Technical College, Rathmalana.
8. L.L. Lalantha De Silva
Technical College, Galle.

9. S.W. Nilaweera

Technical College, Matara.

10. Mrs. W.A.D.M.M. Wijesinghe

Technical College, Ratnapura.

11. Mrs. K.K. Chandrika

University of Vocational Technology,

No. 100, Kandawala Road, Ratmalana.

12. G.P. Wijesinghe

University of Vocational Technology,

No. 100, Kandawala Road, Ratmalana.

13. H.K. Dalugama,

University of Vocational Technology,

No. 100, Kandawala Road, Ratmalana.

14. M.K. Gunawardana

Technical College, Kurunegala.

15. A.M.R.R. Abeykoon

Technical College, Kurunegala.

16. I.D.J. Kulathunga

University of Vocational Technology,

No. 100, Kandawala Road, Ratmalana.

17. A.L.J. Silva

Technical College, Kalutara.

18. L.D. Damayanthi

Technical College, Matara.

19. Sujeewa Sonnadara

Technical College, Galle.

20. Linton Sirimanna

Technical College, Galle.

21. A.K. Hettiarachchi

Technical College, Galle.

22. A.S.C. De Silva

Technical College, Rathmalana.

23. W.M. Thilakaratna

Technical College, Monaragala.

24. P.K. Nimal Gunathilaka

Technical College, Gampaha.

PETITIONERS

-Vs-

1. Thilak Hapangama

Secretary to the Ministry of Vocational &

Technical Training, "Nipunatha Piyasa"

354/2, Elvitigala Mw., Colombo 5.

1A. S.S. Hewapathirana

Secretary to the Ministry of Vocational &

Technical Training, "Nipunatha Piyasa"

354/2, Elvitigala Mw., Colombo 5.

1B. P. Ranepura

Ministry of Science, Technology, Research,
Skills Development & Vocational Training &
Kandyan Heritage Affairs, "Nipunatha
Piyasa", 354/2, Elvitigala Mw, Colombo 05.

2. H.I. Obeysekara

Director General
Department of Technical Education
Training,
P.O. Box 557, Olcott Mw, Colombo 10.

2A. H.C. Ambawatte

Director General
Department of Technical Education
Training,

P.O. Box 557, Olcott Mw, Colombo 10

2B. Mrs. P.N.K. Malalasekara,

Director General
Department of Technical Education
Training,

P.O Box 557, Olcott Mw, Colombo 10

3. K.P.K. Gamini Chandrasakara

College of Technology Badulla.

4. K.J.T. Jayathilaka
College of Technology, Kurunegala.

5. W.M.C. Bandara
Sri Lanka College of Technology,
Maradana, Colombo 10.

6. K.P.D.S. Pathiraja
College of Technology, Anuradhapura.

7. A.L. Buddudeen
Hardy College of Technology, Ampara.

8. W.M.N.B. Weerasekara
College of Technology, Aruppola, Kandy.

9. K.V. Anura Keerthi
College of Technology, Rathnapura.

10. W.B.P. Premarathna,
College of Technology, Galle.

11. N. Yogarajah,
College of Technology, Jaffna.

12. Saman Dissanayaka,
College of Technology, Badulla.

13. G.H. Amarasooriya,
College of Technology, Kurunegala.

14. A.M.K.B. Nawarathna,

Sri Lanka College of Technology,

Maradana, Colombo 10.

15. K.A.S. Abeyrathna,

College of Technology, Anuradhapura

16. Athula Jayawardena,

Hardy College of Technology, Ampara.

17. B.B. Gamage,

College of Technology, Aruppola, Kandy.

18. W.A. Piyasena,

College of Technology, Rathnapura.

19. P.R Keerthisinghe

College of Technology, Jaffna

20. V. Sundaralingam

College of Technology, Jaffna.

21. C. Siriwardena

Additional Secretary to the Ministry of

Public Administration,

Ministry of Public Administration,

Independence Square, Colombo 07.

22. B.E. Dissanayake

Secretary to the Ministry of Media,

Ministry of Media, Elvitigala Road,

Narahenpita.

23. Sunimal Seneviratne,
Secretary to the Ministry of Livestock
Development,
Ministry of Livestock Development, No. 45,
St. Michel's Road, Colombo 03.

24. Honourable Attorney General
Attorney General's Department,
Colombo 12.

25(a) Dharmasena Dissanayake
Chairman,

26(a) Prof. Hussain Ismail
Member

27(a) Mrs. Dhara Wijeyatilake
Member

28(a) Dr. Prathap Ramanujam
Member

29(a) Mrs. V. Jegarasasingam
Member

30(a) Shanthi Nihal Seneviratne
Member

31(a) S. Ranugge
Member

32(a) D. Laksiri Mendis

Member

33(a) Sarath Jayathilake

Member

34(a) M.A.B. Daya Senarath

Secretary

25(a) to 34(a) Respondents all of:

No. 1200/9, Rajamalwatte Road,

Battaramulla

RESPONDENTS

BEFORE:

S. THURAIRAJA, PC, J.

KUMUDINI WICKREMASINGHE, J. AND

SAMPATH B. ABAYAKOON, J.

COUNSEL:

Shantha Jayawardena with Hirannayan Damunupola, Azra Basheer and Wihangi Thissera instructed by Lilanthi De Silva for the Petitioners.

Ms. Ganga Wakishta Arachchi, DSG for the 1st, 2nd, 51st and 54th Respondents.

Kamal Dissanayake with Dulna de Alwis for the 3rd, 5th - 10th, 12th - 14th and 17th Respondents in SC.FR. No. 925/2009 and for the 3rd, 5th, 10th, 12th, 14th- 17th, 26th, 27th, 32nd, 33rd, 38th, 40th, 42nd – 44th and 47th Respondents in SC.FR. No. 926/2009 instructed by Wasantha Kahathuduwa, G. Ananda Silva and Ms. Pradeepa.

Dr. Sunil Abeyratne with Hemamala Kumari for 21st – 24th, 28th, 34th, 35th, 46th, 51st Respondents.

WRITTEN Petitioners on 17th September 2025

SUBMISSIONS: Respondents on 17th September 2025

ARGUED ON: 28th August 2025

DECIDED ON: 05th January 2026

S. THURAIRAJA, PC, J.

1. This Fundamental Rights application was preferred by Public Officers belonging to Class II of the Sri Lanka Technical Education Service (hereinafter referred to as "Petitioners") seeking, *inter alia*, a declaration that their fundamental right guaranteed under Article 12(1) of the Constitution has been violated due to the action of one or more of the Respondents.
2. At the commencement of the arguments on 28th August 2025, all parties agreed that the determination in SC FR 925/2009 would be applicable to the connected matter SC FR 926/2009, given the similarity of the legal and factual issues.
3. Instant applications relate to the appointments of the 3rd to 11th Respondents as Directors of the Colleges of Technology and the appointments of the 12th to 20th Respondents as Additional Directors of the Colleges of Technology. The Petitioners assert that these appointments were made without following the proper procedure and in disregard of the applicable eligibility criteria. Petitioners are also contending the subsequent promotions granted to these Respondents to Class I of the Sri Lanka Technical

Education Service (SLTES), claiming that such advancements were similarly irregular and unjustified.

4. The Deputy Solicitor General also raised four preliminary objections concerning the maintainability of these applications, asserting that they should be dismissed *in limine* without a consideration of the merits. They are as follows:
 - i. The application of the Petitioner was filed out of time hence it is time-barred;
 - ii. The Petitioners have suppressed vital material facts and have made misrepresentations of facts;
 - iii. The Petitioners have no *locus standi* to maintain this application; and
 - iv. Necessary parties are not before the court.

OBJECTION ON TIME BAR

5. I shall, at the outset, consider the objection founded on the time bar, as the application must be dismissed *in limine* for want of jurisdiction, if the same is upheld.
6. Article 126(2) of the Constitution stipulates that an application alleging the infringement of a fundamental right must be instituted within one month from the date of the alleged violation. The mandatory nature of this *one-month rule* has been emphasised time and time again by this Court.¹ Unless there are the most exceptional of circumstances in which

¹ See, among others, *Vithana Arachchige Anurasiri Vithana Arachchi v. Police Constable 57746, Jayakody and Others*, SC (FR) Application No. 304/2020, SC Minutes of 5 December 2025, at pp. 6-7; *Abdul Jabbal Mohammad Illyas v. Hon. Gamini Jayawickreme Perera and Others*, SC/FRA/162/2015, SC Minutes of 29 November 2024, at para 12; *Rajaye Thakserukarunwage Sangamaya and 5 Others v. P. P. D. S. Muthukumarana and Others*, S.C.(F.R.) Application No. 269/2021, SC Minutes of 17 December 2021, at pp. 12-18; *Batuwana Dewage Lionel Hemakumara v. Ruwan Gunasekara and Others*, SC FR Application

the principle *lex cogit ad impossibilia* is applicable,² this Court does not have jurisdiction to entertain an application that is filed out of time.³

7. The Petition relates to a sequence of administrative actions between 2007 and 2009. Initially, the 2nd Respondent issued Circulars on 22nd January 2007 [Marked "P6"], and 6th February 2007 [Marked "P7"], suspending all promotions to Class I until the Service Minute could be formally amended to incorporate the new cadre for the Colleges of Technology. Despite this suspension, an advertisement was published on 12th June 2008, in the *Daily News* [Marked "P8"], calling for applications for the posts of Director and Additional Director of the Colleges of Technology. This initial process did not lead to appointments because the Department of Management Services had not yet formally approved the cadre.
8. On 16 July 2008, the 1st, 2nd, and 5th Petitioners appeared for interviews; however, no

No. 451/2016, SC Minutes of 29 July 2020, at pp. 4-5; *Demuni Sriyani De Soyza and Others v. Dharmasena Dissanayake and Others*, S.C F.R. 206/2008, SC Minutes of 09 December 2016, at p. 8-9; *Lake House Employees Union v. Associated Newspapers of Ceylon Ltd and Others*, SC FR Application No. 637/2009, SC Minutes of 17 December 2015, at pp. 5-7; *Kulatunga v. Hon Lokubandara* [2010] Sri LR 16, at p. 20; *Gamaethige v. Siriwardene and Others* [1988] 1 Sri LR 384, at p. 402; *Edirisuriya v. Navaratnam and Others* [1985] 1 Sri LR 100, at p. 105;

² *Vithana Arachchige Anurasiri Vithana Arachchi v. Police Constable 57746, Jayakody and Others*, SC (FR) Application No. 304/2020, SC Minutes of 5 December 2025, at pp. 7-9; *Rajaye Thakserukaruwange Sangamaya and 5 Others v. P. P. D. S. Muthukumarana and Others*, S.C.(F.R.) Application No. 269/2021, SC Minutes of 17 December 2021, at pp. 16-18; *Demuni Sriyani De Soyza and Others v. Dharmasena Dissanayake and Others*, S.C F.R. 206/2008, SC Minutes of 09 December 2016, at p. 9-14; *Alawala v. The Inspector General of Police and Others*, SC FR 219/2015, SC Minutes of 2016, at p. 10; *Janaka I. De A. Goonetilleke and Others v. Neville Piyadigama and Others*, SC FR 308/2009, SC Minutes of 30 January 2014, at p. 13; *Kulatunga v. Hon Lokubandara* [2010] Sri LR 16, at pp. 20021; *Gamaethige v. Siriwardene and Others* [1988] 1 Sri LR 384, at p. 402; *Ramanathan v. Tennekoon* [1988] 2 CALR 187, at p. 190

³ *K.H.G. Kithsiri v. Hon. Faizer Mustapha and Others*, SC FR Application No. 362/2017, SC Minutes of 10 January 2018, at p. 7; *Demuni Sriyani De Soyza and Others v. Dharmasena Dissanayake and Others*, S.C F.R. 206/2008, SC Minutes of 09 December 2016, at p. 8; *Illangaratne v. Kandy Municipal Council* [1995] BALJ Vol. VI Part 1, at p. 10

appointments were made at that stage as the relevant cadre positions had not yet received approval and the applicable Service Minute remained unamended. Shortly thereafter, on 18th July 2008, the Department of Management Services granted approval for the creation of a new cadre, although this approval was not gazetted for more than a year.

9. In the interim, on 20th February 2009, new Procedural Rules of the Public Service Commission were published. Subsequently, on 6th March 2009, a notice inviting applications for Class III positions was issued, prescribing 31st March 2009 as the closing date for applications and as the cut-off date for required qualifications. Despite this, a Gazette Notification dated 10th July 2009 [Marked "P11"] called for promotions from Class II to Class I and imposed a markedly earlier eligibility cut-off date of 1st January 2006.
10. Thereafter, on 11th September 2009 and 18th September 2009, two differing marking schemes governing the promotional process were issued, one by way of circular and the other by Gazette and interviews were conducted in late September 2009 for 165 officers, during which the 1st and 2nd Petitioners were informed that they were ineligible on the basis that they had not satisfied the 2006 cut-off requirement.
11. It was only on 16th October 2009 that a Gazette notification formally established 18 new cadre positions, claiming to give such creation retrospective effect from July 2008. Following this, on 29th October 2009, letters of appointment were issued to the 3rd to 20th Respondents, who thereafter assumed duties as Directors and Additional Directors on 3 November 2009. The present petition was filed on the 2nd December 2009.
12. The Petitioners state that they are not challenging the application process where the applications were invited for promotions to Class I of SLTES by the Gazette Notification dated 10th July 2009 [Marked "P11"]. Their contention is instead based on the fact that the vacancies in question were not in existence at the time of calling applications.

13. The Petitioners state that, as specified by the Government Gazette dated 10th July 2009 [Marked "P11"], candidates must have completed five years of service in Class II as at 1st January 2006. They contend that if eligibility is restricted to officers who had the required five years of service by that date, then only vacancies that existed on or before 1st January 2006 could lawfully have been filled based on such criteria. However, if a vacancy arose later, the Petitioners contend that eligibility should then reasonably extend to officers who had completed five years of service by that later date.
14. The Petitioners state that although they did not meet the eligibility criteria by the 1st January 2006, by the date on which Advertisement P11 was issued, namely, 16th October 2009, all the Petitioners had acquired and satisfied the full set of qualifications prescribed for eligibility for promotion from Class II to Class I, and were therefore duly qualified to be considered for such promotion.
15. The Respondents contend that applications for promotion to Class I of the Sri Lanka Technological Education Service (SLTES) were duly called by Gazette Notification [marked "1R1" (identical to "P11")] dated 10th July 2009, expressly stating that the eligibility as at 01st January 2006 is to be considered. However, the present Petition was instituted only on 02nd December 2009, over three years and eleven months later. The Respondents further submit that the Petitioners have wholly failed to establish that their case falls within the maxim *lex non cogit ad impossibilia* so as to justify the delay in invoking the jurisdiction of this Court.
16. The Petitioners state that they only became aware of the said appointments after the 3rd to 20th Respondents had assumed duties on 03rd November 2009 in the positions of Director and Additional Director. The letters of appointment were personally addressed to the appointees and were not accessible to the Petitioners. They claim to have only

become aware of the appointments through subsequent letters and circulars issued after the Respondents assumed duties, which are produced as P17–P24.

17. Although the Petitioners claim to have had no knowledge of the appointments on this basis, from the arguments made before us, it is clear that the grievances of the Petitioners' related to the condition that required qualifications need to have been satisfied by 01st January 2006. Clearly, the infringement alleged by the Petitioners is immediately referable to this particular condition in the scheme of promotions.

18. As Kulatunga, J. held in **Gunaratne v. Sri Lanka Telecom [1993]**,⁴

"...if a scheme, such as the one before us, affecting promotions in an existing service is inherently discriminatory, the right to relief accrues immediately upon the adoption of such scheme and prospective candidates for promotion under such scheme may apply for a declaration that such scheme is invalid on the ground that it constitutes an infringement or an imminent infringement of their rights under Article 12 (1)."

19. Similarly, Fernando, J. reasoned in **Dayaratne v. National Savings Bank [2002]**⁵ as follows:

"The first limb of the Respondents' preliminary objection is that after the lapse of one month the Petitioners were not entitled to challenge the scheme of promotion. The 1st Respondent was entitled, from time to time, and in the interests of the institution, to lay down the basis on which employees would be promoted, and that became part of the contract of employment. The scheme of promotion published on 12. 02. 2001 was directly and immediately applicable to the petitioners, and became part of the

⁴ [1993] 1 Sri LR 109, at p. 115

⁵ [2000] 3 Sri LR 116, at p. 124

terms and conditions of their employment. If they did not consent to those terms and conditions, as being violative of their rights under Article 12, they should have complained to this Court within one month."

20. It is of significance that, in the instant case, the criteria for promotions were announced via Government Gazette dated 10th July 2009 [Marked "P11"], and the said Gazette contained this condition. If the Petitioners thought the aforementioned condition to be arbitrary and violative of Article 12(1) of the Constitution, they ought to have challenged the same one month after the publication of the said Gazette, which they have failed to do. If the said Gazette did not amount to sufficient notice, the Petitioners should have explained why. That, too, has not been done.

21. As Prasanna Jayawardena, PC, J. held in ***Demuni Sriyani De Soyza and Others v. Dharmasena Dissanayake and Others [2016]***,⁶

"It should be added here that, if the facts and circumstances of an application make it clear that, a Petitioner, by the standards of a reasonable man, should have become aware of the alleged infringement by a particular date, the time limit of one month will commence from that date on which he should have become aware of the alleged infringement..."

22. His Lordship, emphasising that objective criteria must be applied in determining when a petitioner became aware of an alleged infringement, further referred to the case of ***Illangaratne v. Kandy Municipal Council [1995]***,⁷ where Kulatunga, J. held,

"...it would not suffice for the petitioner to merely assert that he personally had no knowledge of the discriminatory act, if on an objective assessment of the evidence he

⁶ S.C F.R. 206/2008, SC Minutes of 09 December 2016, at pp. 10-11

⁷ BALJ Vol. VI Part 1, at p. 11

ought to have had such knowledge."

23. The necessity to apply objective criteria in this regard has been subsequently emphasised by this Court in numerous judgments.⁸ Accordingly, in the face of a clear and public disclosure of the promotions criteria by Government Gazette dated 10th July 2009 [Marked "P11"], I am unable to accept the Petitioners' contention that they had no prior knowledge of the alleged violation.
24. The Petitioners also state that the 5th Petitioner lodged Complaint No. HRC/3094/09 before the Human Rights Commission of Sri Lanka, alleging that the restriction contained in P11, which confined eligibility to apply for promotion to Class I constituted a violation of his fundamental rights.
25. It was contended that, in addition to the time limitation stipulated under Article 126(2) of the Constitution, Section 13(1) of the *Human Rights Commission of Sri Lanka Act, No. 21 of 1996* provides a distinct statutory avenue for the redress of human rights grievances. This provision enables an aggrieved person to initially seek relief by lodging a complaint before the Human Rights Commission in respect of an alleged infringement of fundamental rights. Learned Counsel for the Petitioners argued that the filing of such a complaint serves to preserve the Petitioner's right to subsequently invoke the jurisdiction of this Court, notwithstanding the expiration of the one-month period prescribed under Article 126(2).⁹

⁸ *Dola Mullage Gunarathna and Another v. K. W. E. Karalliyadda and Others*, SC FR 18/2020, SC Minutes of 7 September 2022, at pp. 14-15; *K.H.G. Kithsiri v. Hon. Faizer Mustapha and Others*, SC FR Application No. 362/2017, SC Minutes of 10 January 2018, at p. 9

⁹ Some earlier authorities may be read in such a manner to support this contention: *See, Amura Deshapriya Alles and Another v. Road Passenger Services Authority of the Western Province and Others*, S.C.F.R. 448/2009, SC Minutes of 22 February 2013; *Romesh Coorey v Jayalath* [2008] 2 Sri LR 43

26. Conversely, the learned Deputy Solicitor General emphasized the strict and mandatory nature of the constitutional time bar. They contended that this limitation is binding in all circumstances and that the mere lodging of a complaint before the Human Rights Commission does not suspend, nullify, or extend the constitutionally prescribed period.

27. In order to ensure the applicability of Section 13(1), it becomes necessary to examine, as a matter of preliminary consideration, whether the act of lodging a complaint before the Human Rights Commission has the effect of suspending or extending the constitutional time limit within which a fundamental rights application may be filed before this Court.

28. It is now settled law that Section 13 of the *Human Rights Commission of Sri Lanka Act, No. 21 of 1996* should not be interpreted in a manner to suspend the one-month rule stipulated in the Constitution¹⁰ and that the mere filing of a complaint before the Commission is not sufficient to obtain the benefit of the said provision.¹¹

29. Having referred to a long line of authorities, Janak De Silva, J., in ***Thilangani Kandambi v. State Timber Corporation and Others [2022]***,¹² synthesised the development of the

¹⁰ *Marapitiya Arachchilage Manjula Somawardana and Others v. Neel Bandara Hapubinne and Others*, SC/FR/06/2023, SC Minutes of 17 December 2025, at p. 18; *K.H.G. Kithsiri v. Hon. Faizer Mustapha and Others*, SC FR Application No. 362/2017, SC Minutes of 10 January 2018, at p. 15; *Alagaratnam Manorajan v. Hon. G.A. Chandrasiri, Governor, Northern Province and Others*, S.C.F.R. 261/2013, SC Minutes of 11 September 2014, at p. 8

¹¹ *Marapitiya Arachchilage Manjula Somawardana and Others v. Neel Bandara Hapubinne*, SC/FR/06/2023, SC Minutes of 17 December 2025, at p. 16-18; *W. A. D. S. Wanasinghe v. Kamal Paliskara, Assistant Superintendent of Police and Others*, SC (FR) Application NO. 216/2014, at p. 7; *K.H.G. Kithsiri v. Hon. Faizer Mustapha and Others*, SC FR Application No. 362/2017, SC Minutes of 10 January 2018, at p. 18; *Ranaweera & Others v. Sub Inspector Wilson Siriwadene and Others [2008] 1 Sri. LR 260*, at p. 273; *Kariyawasam v. Southern Provincial Road Development Authority and 8 Others [2007] 2 Sri. LR 33*; *H.K. Subasinghe v. The Inspector General of Police and Others*, SC (Spl) No.16/1999, SC Minutes of 11 September 2000

¹² SC (FR) Application No. 452/2019, SC Minutes of 14 December 2022, at p. 9-10 (emphasis omitted)

law in this regard 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) *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. [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 Mustapha, (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)]."*
- (c) *A party cannot benefit from the provisions in section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 where the complaint to the Human Rights Commission is made one month after the alleged violation [Alagaratnam Manoranjan v. G.A. Chandrasiri, Governor, Northern Province, (S.C.F.R. 261/2013, S.C.M. 11.09.2014)]*
- (d) *The provisions of section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 is not available to a petitioner who has made a complaint to the Human Rights Commission only to obtain an advantage by bringing his application within Article 126(2) of the Constitution [K.H.G. Kithsiri v Faizer Mustapha, (S.C.F.R. 362/2017, SCM 10.01.2018)]"*

30. The now well-established position that a party who fails to adduce sufficient evidence to satisfy the Court that a complaint before the Human Rights Commission was made within one month, pursuant to which a genuine inquiry was pending, cannot benefit from Section 13(1) of the *Human Rights Commission of Sri Lanka Act* has been reaffirmed in several subsequent judgments of this Court.¹³ Only where such an inquiry is shown to have been genuinely ongoing can the period consumed thereby be excluded for the purpose of computing the applicable time limit.
31. The Petitioner has not produced any evidence to demonstrate that any inquiry is pending before the Human Rights Commission regarding the alleged complaint. Rather, the complaint has been lodged solely as a way to evade the mandatory time bar. Such a tactic cannot, and should not, be permitted as a means of "buying time" to regularize an otherwise time-barred Petition.
32. Upon examining the instant case, I find only an unsubstantiated assertion in paragraph 25 of the petition and the corresponding paragraph of the affidavit, that a complaint had been lodged with the Human Rights Commission (HRC/3094/09). No documentary proof or corroborative material has been produced to substantiate this claim or to show when exactly this complaint was made.

¹³ *Marapitiya Arachchilage Manjula Somawardana and Others v. Neel Bandara Hapubinne and Others*, SC/FR/06/2023, SC Minutes of 17 December 2025; *Vithana Arachchige Anurasiri Vithana Arachchi v. Police Constable 57746, Jayakody and Others*, SC (FR) Application No. 304/2020, SC Minutes of 05 December 2025; *Selladurai Yesuraja v. The Officer in Charge Welikada Police Station and Others*, SC (FR) No. 15/2024, SC Minutes of 12 November 2025; *H.D.S. Wimalarathna v. D.M.S.K. Dassanayake and Others*, SC FR Application No. 524/2012, SC Minutes of 18 September 2025; *Rajaguru Adhikari Mudiyanselage Madhavi Buddhika Rajaguru v. Ashoka Wijemanne and Others*, SC (FR) Application No. 190/2019, SC Minutes of 19 July 2024; *Aththanayake Mudiyanselage Kelum Aththanayake v. H.W.S. Udayakumara and Others*, SC FR Application No. 412/2015, SC Minutes of 27 June 2024; *Dr. Abdul Razak Jawzeek v. Dr. R.M.S. Dinusha Fernando and Others*, SC FR 281/2022, SC Minutes of 01 April 2024

33. In the instant matter, the Petitioner has neither furnished evidence to establish that any inquiry was pending before the Human Rights Commission, nor provided a satisfactory explanation for the prolonged delay in filing the Petition.

CONCLUSION

34. As more fully explained above, the Petitioners have failed to file this application within a constitutionally stipulated time period. Accordingly, I uphold the preliminary objection raised by the Respondents.

35. As the application is time barred, this court does not have the jurisdiction to hear and determine this matter, and the Petition is accordingly dismissed.

Application Dismissed.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE SUPREME COURT