

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

*In the matter of an Application under
Articles 17 and 126 of the Constitution
of the Democratic Socialist Republic of
Sri Lanka.*

SC/ FRA/

/ 2023

Rathnayake Mudiyansele Ranjith
Madduma Bandara
No. 31/3
Kandawatte Terrace,
Nugegoda.

Petitioner

V.

1. K. M. Mahinda Siriwardana
Secretary to the Treasury
Ministry of Finance
The Secretariat
Colombo 01.
2. Hon. Attorney General
Attorney General's Department
Colombo 12. (*named a Respondent in
terms of the first proviso to Article
35(1) of the Constitution.*)
3. Saman Sri Ratnayake
Commissioner General of Elections
Election Secretariat
No. 02
Sarana Mawatha, Rajagiriya.
4. Nimal Punchihewa
Chairman
5. S. B. Divaratne
Member
6. M. M. Mohamed
Member
7. K. P. P. Pathirana

Member

04th to 07th Respondents of;

The Election Commission
Election Secretariat
No. 02
Sarana Mawatha, Rajagiriya.

8. G. K. D. Liyanage
Government Printer
Department of Government Printing
No. 118
Dr. Danister De Silva Mawatha
Colombo 08.
9. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

On this 21st day of February 2023

TO HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER HONOURABLE JUSTICES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

The **PETITION** of the Petitioner above-named, appearing by Sampath Wijewardena, Registered Attorney-at-Law, states as follows:

SCOPE OF THE APPLICATION

The instant Application impugns, *inter alia*, the arbitrary, wrongful, malicious, capricious, illegal, unlawful, and pernicious actions and/or decisions of the 01st Respondent and/or 02nd Respondent (i.e. Honourable Minister of Defence, Finance, Economic Stabilization, National Policies, Technology, Investment Promotion, Women, Child Affairs and Social Empowerment represented by the Honourable Attorney-General) to not provide adequate funds to, *inter alios*, the 04th, 05th, 06th and 07th Respondents (Elections Commission of Sri Lanka) for the purpose of conducting Local

Authorities Elections, in violation of the Fundamental Rights guaranteed to the Petitioner and to all citizens of Sri Lanka by Articles 12(1) and 14(1)(a) of the Constitution and in violation of their right to exercise their franchise guaranteed to them by Articles 03 and 04 of the Constitution.

It is also respectfully stated that the right to vote at a local election is also considered as a right of franchise and has to be safeguarded with the sanctity it deserves as a fundamental right of the citizenry of the Republic of Sri Lanka.

The Petitioner further states that the entire community including the Respondents to this Application are vested with a fundamental duty to uphold and defend the Constitution and the law and are duty-bound to preserve, promote and uphold the right to vote. The Petitioner states that in such circumstances this Application is instituted on behalf of the Petitioner and in the interests of the citizens of Sri Lanka and with the sole objective of preserving democratic governance in the country.

THE PETITIONER

1. The Petitioner is a planter, businessman, and a Member of Parliament of Sri Lanka representing 'Samagi Jana Balawegaya' (SJB). The Petitioner is also the General Secretary of the aforesaid 'Samagi Jana Balawegaya' which political party intends to contest the Local Government polls 2023.

*[A copy of the profile of the Petitioner as stated in the official website of the Parliament of Sri Lanka marked **P1** is annexed hereto and pleaded as part and parcel hereof]*

THE RESPONDENTS

2. The Petitioner states that;
 - (a) the 01st Respondent is the Secretary to the Treasury;
 - (b) the Honourable Attorney General is named as the 02nd Respondent in his capacity, in terms of the first proviso to Article 35(1) of the Constitution

and the proviso thereof, to duly represent the Honourable Minister of Defence, Finance, Economic Stabilization, National Policies, Technology, Investment Promotion, Women, Child Affairs and Social Empowerment who also currently holds the office of the President of the Democratic Socialist Republic of Sri Lanka. Thus, the Honourable Attorney General has been named in terms of Article 35(1) of the Constitution and the proviso thereof and the Rules of Your Lordships 'Court;

- (c) the 03rd Respondent is the Commissioner-General of Elections;
- (d) the 04th Respondent is the Chairman of the Election Commission;
- (e) the 05th to 07th Respondents are members of the aforesaid Election Commission;
- (f) the 08th Respondent the Government Printer of Sri Lanka;
- (g) the 09th Respondent is the Honourable Attorney-General of the Democratic Socialist Republic of Sri Lanka.

3. The Petitioner respectfully reserves the right to add as Respondents any other persons who may be responsible if and when their names are revealed to the Petitioner and to amend the Petition accordingly, and if necessary to enlarge the prayers to cover such added Respondent(s).

THE LOCAL GOVERNMENT ELECTION 2023

4. The Petitioner states that by Gazette Extraordinary bearing No. 2311/26 dated 21st December 2022, the 04th to 07th Respondents proceeded to appoint the Returning Officers and Assistant Returning Officers for the relevant Administrative Districts as per Section 4(1) of the Local Authorities Elections Ordinance No.53 of 1946 (*as amended*)

*[A copy of the Gazette Extraordinary bearing number 2311/26 dated 21st December 2022 marked **P2** is annexed hereto and pleaded as part and parcel hereof]*

5. Thereafter, by Gazette Extraordinary bearing No. 2312/44 dated 29th December 2022, the 04th to 07th Respondents proceeded to issue notices as per Sections 27E, 28(2), 28(2)(A), 28(2) (B) and 29(1)(A)(I)(II) of the Local Authorities Elections Ordinance No.53 of 1946 (*as amended*), which, *inter alia*, stipulated the sum of money to be deposited for the purpose of election to the Local Authority by the candidates nominated by recognised political parties and independent groups.

*[A copy of the Gazette Extraordinary bearing number 2312/44 dated 29th December 2022 marked **P3** is annexed hereto and pleaded as part and parcel hereof]*

6. The Petitioner states that the 04th to 07th Respondents published a notice dated 04th January 2023 calling for nominations for the aforesaid Local Government polls 2023, in three-hundred and forty (340) local government authorities (except for the Elpitiya Pradeshiya Sabha in the Galle District). Accordingly, the nomination forms are to be handed over to the relevant District Secretary functioning as the Returning Officer with the deposits for the said nominations.

*[Copies of the notice bearing number LAE/2023/01 dated 04th January 2023 marked **P4** and LAE/2023/02 dated 04th January 2023 marked **P5** are annexed hereto and pleaded as part and parcel hereof]*

7. Accordingly, it was announced by the 04th to 07th Respondents that the said Local Government polls 2023 will be held on 09th March 2023.

SCUTTLING ENTIRETY OF THE LOCAL GOVERNMENT ELECTION PROCESS THAT HAS BEEN EMBARKED UPON BY THE 3rd TO THE 7th RESPONDENTS JOINTLY AND SEVERALLY, BY NON-PROVISION OF FUNDS TO CONDUCT THE LOCAL GOVERNMENT POLLS 2023

8. Much to the shock and dismay of, *inter alios*, the Petitioner, on or about 17th February 2023, the 01st Respondent has proceeded to apprise the 04th to 07th Respondents that there is a difficulty to provide adequate funds to conduct the Local Government polls 2023.
9. The 04th Respondent disclosed to the media that, *inter alios*, the 01st Respondent has apprised that as per a purported circular, it is possible to allocate money only for essential services which do not include election activities and the approval of the Honourable President was necessary to obtain the said funds.

*[Copies of media reports on the said matter compendiously marked **P6** are annexed hereto and pleaded as part and parcel hereof. By reason of brevity and attendant exigencies, the Petitioner reserves the right to submit the said circular in due course]*

10. The Petitioner states that the arbitrariness, wrongfulness, illegality, and unlawfulness of the aforesaid decision taken by the 01st and/or 02nd Respondents is evident by the fact that, as per the Activity Budget Estimates for the fiscal year of 2023, an estimated sum of Ten Billion Rupees (LKR 10,000,000,000) has been allocated to the Election Commission for conducting elections other than parliamentary elections. The said National Budget has been approved by the Parliament by a majority of the Members of Parliament and thereby gained statutory flavor and cannot be varied or amended by any means other than by a further resolution to be passed by the Parliament.
11. The said provision of allocation of Rs 10 Billion is the only budgetary allocation that promotes and safe guards the article 3 & 4 of the Constitution of the Republic of Sri Lanka that cannot be tampered by Executive Action by arbitrary and/or capricious means.

*[A copy of the Activity Budget Estimates for the fiscal year of 2023 marked **P7** is annexed hereto and pleaded as part and parcel hereof]*

POSTPONEMENT OF THE POSTAL VOTING PROCESS

12. The Petitioner states that in media releases dated 14th February 2023 and 17th February 2023, the 03rd Respondent announced that postal voting for the Local Government Election was postponed indefinitely due to factors beyond the control of the Elections Commission and by reason of the fact that the 08th Respondent has not tendered postal voting cards to the Elections Commission.

*[Copies of the media releases dated 14th February 2023 marked **P8(a)** and 17th February 2023 marked **P8(b)** are annexed hereto and pleaded as part and parcel hereof]*

13. The same was communicated by the 03rd Respondent to, *inter alios*, all returning officers by notice dated 17th February 2023.

*[A copy of the notice dated 17th February 2023 marked **P9** a media report on the indefinite postponement of the Postal Voting process compendiously marked **P10** are annexed hereto and pleaded as part and parcel hereof]*

GRIEVANCES OF THE PETITIONER

14. The Petitioner states that as per Article 4(e) of the Constitution of the Democratic Socialist Republic of Sri Lanka, the franchise shall be exercisable at the election by every citizen who has attained the age of eighteen years and who, being qualified to be an elector, has their name entered in the register of electors.

15. The Petitioner states that the franchise pertaining to Local Authorities comes within the purview of the franchise guaranteed by Articles 03 and 04 of the Constitution.
16. The Petitioner further states that the right to a free, equal, and secret ballot embodying the right of franchise is an integral part of the citizen's freedom of expression recognised by Article 14(1)(a) of the Constitution, especially in view of Sri Lanka's obligations under Article 25 of the International Covenant on Civil and Political Rights and Article 27(15) of the Constitution.
17. The Petitioner states that the citizen's right to vote includes the right to freely choose their representatives, through an election that guarantees the free expression of the will of the electors. Therefore, not only are citizens entitled to vote at a poll, but they also have a right to a genuine election guaranteeing the free expression of the will of the entire electorate with no hindrance from any quarter in particular the executive and or an administrative agency.
18. Therefore, the Petitioner states that the actions and/or decisions of the 01st and/or 02nd, (i.e. Honourable Minister of Defence, Finance, Economic Stabilization, National Policies, Technology, Investment Promotion, Women, Child Affairs and Social Empowerment represented by the Honourable Attorney-General) Respondents to not provide adequate funds to conduct the Local Government polls 2023 notwithstanding the fact that an estimated sum of Ten Billion Rupees (LKR 10,000,000,000) has been allocated to the Election Commission for conducting elections other than parliamentary elections under the Activity Budget Estimates for the fiscal year of 2023 and/or Budget for the year 2023 is, *inter alia*, a violation of the Fundamental Rights guaranteed to the Petitioner and or faced by the imminent danger of their rights as guaranteed by the Constitution of Sri Lanka protecting the citizens of Sri Lanka under **Articles 12(1) and 14(1)(a) and the right to franchise guaranteed by Articles 03 and 04** of the Constitution of the Democratic Socialist Republic of Sri Lanka.

19. It is respectfully stated that such an effort by the Minister of Finance (of which the portfolio held by the Honourable President represented by the 02nd Respondent) would plunge the Republic of Sri Lanka into a pariah state and looked down by all the civilized states jeopardizing the ailing economy of the country into an irreparable irreversible state and a point of no return.
20. The Petitioner states that such acts and/or decisions are tantamount to directly, or indirectly impeding and/or preventing the free exercise of the franchise of any elector.
21. The Petitioner states that the Hon. Minister of Finance, which portfolio is held by the His Excellency the President (of which the portfolio held by the Honourable President represented by the 02nd Respondent) has no mandate by the people of Sri Lanka to act in such a dictatorial manner disregarding democratic values that are enshrined in the Constitution of the Democratic Socialist Republic of Sri Lanka particularly in article 3,4,12(1) & 14(1) of the same.
22. The Petitioner is entitled to the legitimate expectation a genuine election guaranteeing the free expression of the will of the entire electorate will be conducted sans any interference and/or impediment by, *inter alios*, the 01st and/or 02nd, (i.e. Honourable Minister of Defence, Finance, Economic Stabilization, National Policies, Technology, Investment Promotion, Women, Child Affairs and Social Empowerment represented by the Honourable Attorney-General) Respondents and/or their agents and/or servants.
23. The Petitioner is entitled to the legitimate expectation that the funds allocated to the Election Commission for conducting elections as per the Activity Budget Estimates for the fiscal year of 2023 and/or the Budget for the year 2023 will be disbursed in order to enable the aforesaid Election Commission to hold a genuine election guaranteeing the free expression of the will of the entire electorate.
24. The Petitioner has been compelled to come before Your Lordships' Court in sheer desperation and frustration, seeking Your Lordships 'indulgence and

direction to safeguard the interest and legitimate expectations and compel the Respondents to carry out their constitutional and/or statutory duties and the proper procedure in a reasonable and rational manner.

25. The Petitioner states that grave and irreparable loss and damage will be caused, and the instant Application will be rendered nugatory unless Your Lordships' Court be pleased to issue the Interim Relief prayed for herein.
26. The Petitioner further states that unless an interim order is issued by your Lordships Court to facilitate the Local Government Election process of 2023 at every step of the way and facilitate the election commission and the Director General of the Elections to hold the Local Government Elections of 2023 until the conclusion of the Local Government Elections of 2023 and the release of the results there will be an irreparable loss that will be caused to the Petitioner and the citizenry of the Republic of Sri Lanka who is legible to at the Local Government Elections of 2023.
27. The Petitioner respectfully reserves the right to amend this Petition and/or add further parties and/or adduce further material in the event it becomes necessary and/or expedient to do so, depending on the disclosures emanating from the pleadings and/or submissions made on behalf of the Respondents.
28. In the interest of full disclosure, the Petitioner has instituted a Fundamental Rights Application bearing number SC/FR/40/2023 before Your Lordships' Court, impugning, *inter alia*, the letter dated 10th January 2023 issued by the Secretary Ministry of Public Administration, Home Affairs, Provincial Councils, and Local Government ordering and/or directing not to accept deposits from the Local Government Election candidates.
29. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.

30. The Petitioner annexes hereto an Affidavit of the Petitioner in support of the averments set out herein.

WHEREFORE the Petitioner prays that Your Lordships' Court be pleased to:

- a) grant leave to proceed with this Application in the first instance;
- b) in particular, direct the 01st and/or 02nd Respondents to tender to Your Lordships' Court the purported circular prohibiting the financing of the Local Government Polls 2023;
- c) declare that the Petitioner's Fundamental Rights guaranteed under **Article 12(1)** have been infringed and/or there is a likelihood of imminent infringement by the 01st and/or 02nd Respondents by reason of the non-provision of adequate funds to the 03rd, 04th, 05th, 06th and/07th Respondents to conduct the Local Government Polls 2023;
- d) declare that the Petitioner's Fundamental Rights guaranteed under **Article 14(1)(a)** have been infringed and/or there is a likelihood of imminent infringement by the 01st and/or 02nd Respondents by reason of the non-provision of adequate funds to the 03rd, 04th, 05th, 06th and/07th Respondents to conduct the Local Government Polls 2023;
- e) declare that the Petitioner's right to exercise franchise guaranteed by **Articles 03 and 04** has been infringed by reason of the non-provision of adequate funds to the 03rd, 04th, 05th, 06th and/07th Respondents to conduct the Local Government Polls 2023 and/or an imminent violation of the said rights;
- f) declare that the decisions and/or directions of the 01st and/or 02nd (i.e. Honourable Minister of Defence, Finance, Economic Stabilization, National Policies, Technology, Investment Promotion, Women, Child Affairs and Social Empowerment represented by the Honourable Attorney-General) Respondents to not provide adequate funds allocated by the Activity Budget Estimates for the fiscal year of 2023 and/or the

Budget for the year 2023 for the purpose of conducting Local Government Polls 2023 to be null and void, and of no force or avail in law;

- g)** declare and/or Order that the funds allocated to the Election Commission for conducting elections other than parliamentary elections as per the Activity Budget Estimates for the fiscal year of 2023 and/or the Budget for the year 2023 be disbursed in a due manner in order to enable the Election Commission to hold the Local Government polls 2023;
- h)** declare and/or order the 08th Respondent to tender postal voting poll cards to the 03rd, 04th, 05th, 06th and/or 07th Respondents to carry out the postal voting process of the Local Government polls 2023;
- i)** issue an **interim order**, restraining and/or preventing the 01st and/or 02nd (i.e. Honourable Minister of Defence, Finance, Economic Stabilization, National Policies, Technology, Investment Promotion, Women, Child Affairs and Social Empowerment represented by the Honourable Attorney-General) Respondents and their servants and agents and any other state functionary from withholding any funds allocated by the Activity Budget Estimates for the fiscal year of 2023 and/or the Budget for the year 2023 for the purpose of conducting Local Government Polls 2023 until the final determination of this Application, subject to such terms, if any, as to Your Lordships' Court sees fit;
- j)** issue an **interim order**, restraining and/or preventing the 01st and/or 02nd (i.e. Honourable Minister of Defence, Finance, Economic Stabilization, National Policies, Technology, Investment Promotion, Women, Child Affairs and Social Empowerment represented by the Honourable Attorney-General) Respondents and their servants and agents and any other state functionary from withholding any funds allocated by the Activity Budget Estimates for the fiscal year of 2023 and/or the Budget for the year 2023 for the purpose of conducting Local Government Polls 2023, from the 08th Respondent, until the final determination of this Application, subject to such terms, if any, as to Your Lordships' Court sees fit;

- k)** Make such further and other just and equitable orders as to Your Lordships 'Court shall seem fit, in the circumstances of this Application, including compensation for the violation of the Petitioner's Fundamental Rights, under and in terms of Article 126(4) of the Constitution of the Republic;

- l)** Grant such other and further relief as to Your Lordships' Court shall seem meet.

Attorney-at-Law for the Petitioner