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

*In the matter of an application for mandates in the
nature of writs of Certiorari and Prohibition under
and in terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka*

**HON. (DR.) UPATISSA ATAPATTU
BANDARANAYAKE WASALA MUDIYANSE
RALAHAMILAGE SHIRANI ANSHUMALA
BANDARANAYAKE,**

Chief Justice of the Supreme Court of Sri Lanka,

Residence of the Chief Justice of Sri Lanka,

129, Wijerama Mawatha,

Colombo 07.

PETITIONER

C.A. (WRIT) APPLICATION

NO. /2012

Vs

1. **HON. CHAMAL RAJAPAKSE,**
Hon. Speaker of Parliament,
Speakers Residence,
Sri Jayawardanepura Kotte.
2. **HON. ANURA PRIYADARSHANA YAPA,
MP**
Eeriyagolla,
Yakwila.
3. **HON. NIMAL SIRIPALA DE SILVA, MP**
93/20, Elvitigala Mawatha,
Colombo 08.
4. **HON. A. D. SUSIL PREMAJAYANTHA,
MP**
123/1, Station Road,
Gangodawila,
Nugegoda.
5. **HON. DR. RAJITHA SENARATNE, MP**
CD 85, Gregory's Road,
Colombo 07.
6. **HON. WIMAL WEERAWANSA, MP**
18, Rodney Place,
Cotta Road,
Colombo 08.

7. **HON. DILAN PERERA, MP**
30, Bandaranayake Mawatha,
Badulla.
 8. **HON. NEOMAL PERERA, MP**
3/3, Rockwood Place,
Colombo 07.
 9. **HON. LAKSHMAN KIRIELLA, MP**
121/1, Pahalawela Road,
Palawatta,
Battaramulla.
 10. **HON. JOHN AMARATUNGA, MP**
88, Negombo Road,
Kandana.
 11. **HON. RAJAVAROTHIAM SAMPATHAN,
MP**
2D, Summit Flats,
Keppitipola Road,
Colombo 05.
 12. **HON. VIJITHA HERATH, MP**
44/3, Medawaththa Road, Mudungoda,
Miriswaththa,
Gampaha.
- All of the above Respondents also of the
Parliament of Sri Lanka, Sri Jayawardanepura
Kotte.
13. **W.B.D. DASSANAYAKE,**
Secretary General of Parliament,
Parliament Secretariat,
Parliament of Sri Lanka,
Sri Jayawardanepura Kotte

RESPONDENTS

**TO: HIS LORDSHIP THE PRESIDENT AND OTHER HONOURABLE JUDGES OF
THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

On this 19th day of December 2012

The **PETITION** of the **PETITIONER** above-named appearing by Kandiah Neelakandan, Sashidevi Neelakandan and Saravanan Neelakandan practising in partnership under the name style and firm of

NEELAKANDAN & NEELAKANDAN

and their Assistants Mohottige Don Raja Mannapperuma, Asurappuli Hewage Sumathipala, Shehani Niranji Ratnaweerage, Mohamed Kaleel Mohamed Irshad, Gnanapragasam Pushpa

Angelin, Sriskandarajah Pratheepa and Pranavan Neelakandan, her Registered Attorneys, states as follows:-

1. The Petitioner is the 43rd and the incumbent Chief Justice of Democratic Socialist Republic of Sri Lanka. The Petitioner was appointed as a Judge of the Supreme Court of Sri Lanka in October 1996 and was appointed as the Chief Justice of Sri Lanka on 18th May 2011.
2. The 1st Respondent is the Hon. Speaker of the Parliament of the Democratic Socialist Republic of Sri Lanka.
3. (a) The Petitioner states that:
 - (a) the 2nd Respondent is a Member of Parliament for the Kurunegala District representing the United People's Freedom Alliance and a member of the Cabinet of Ministers holding the portfolio of Minister of Environment.
 - (b) the 3rd Respondent is a Member of Parliament for the Badulla District representing the United People's Freedom Alliance and a member of the Cabinet of Ministers holding the portfolio of Minister of Irrigation and Water Resources Management and is the leader of the House of the Parliament.
 - (c) the 4th Respondent is a Member of Parliament for the Colombo District representing the United People's Freedom Alliance and a member of the Cabinet of Ministers holding the portfolio of Minister of Petroleum Industries.
 - (d) the 5th Respondent is a Member of Parliament for the Kalutara District representing the United People's Freedom Alliance and a member of the Cabinet of Ministers holding the portfolio of Minister of Fisheries and Aquatic Resources Development.
 - (e) the 6th Respondent is a Member of Parliament for the Colombo District representing the United People's Freedom Alliance and a member of the Cabinet of Ministers holding the portfolio of Minister of Construction, Engineering Services, Housing and Common Amenities.
 - (f) the 7th Respondent is a Member of Parliament for the Badulla District representing the United People's Freedom Alliance and a member of the Cabinet of Ministers holding the portfolio of Minister of Foreign Employment Promotion and Welfare.

- (g) the 8th Respondent is a Member of Parliament for the Puttlam District representing the United People's Freedom Alliance and the Deputy Minister of External Affairs.
 - (h) the 9th Respondent is a Member of Parliament for the Kandy District representing the United National Party.
 - (i) the 10th Respondent is a Member of Parliament for the Gampaha District representing the United National Party.
 - (j) the 11th Respondent is a Member of Parliament for the Trincomalee District representing the Illankai Tamil Arasu Kadchi.
 - (k) the 12th Respondent is a Member of Parliament for the Gampaha District representing the Democratic National Alliance.
- (b) The Petitioner states that the aforesaid 2nd to 12th Respondents were appointed by the 1st Respondent to a Select Committee under a purported Standing Order 78A of the Parliament to investigate into alleged acts of misconduct or incapacity of the Petitioner, pursuant to a Resolution presented to the 1st Respondent in terms of Article 107(2) of the Constitution as morefully set forth hereinafter.
- (c) The 3rd Respondent was the Chairman of the Select Committee purportedly appointed by the 1st Respondent in order to investigate purported charges against the Petitioner in order to impeach the Petitioner.
- (d) The Petitioner states that there is no provision in the Standing Orders of the Parliament, for a Select Committee appointed under the purported Standing Order 78A to continue functioning notwithstanding any vacancy created in such Select Committee.
4. The 13th Respondent is the Secretary General of the Parliament and the Secretary to the purported Select Committee appointed under Standing Order 78A of the Parliament.
5. The Petitioner states that
- (a) the Government of Sri Lanka addressed the attached periodic report to the Human Rights Committee appointed under and in terms of the International Covenant on Civil & Political Rights a treaty to which Sri Lanka is a signatory. A true copy of the said document is filed herewith **marked P1** and pleaded as part and parcel hereof.
 - (b) the Petitioner has been reliably informed that the said report was presented to the said Committee by a high profile delegation including the Permanent Representative to the UN Mr Prasad Kariyawasam, Dr. Rohan Perera, Ms.Lalani Perera and the then Solicitor General of Sri Lanka Mr. C R De Silva, President's Counsel.

- (c) the Petitioner states that the said document in Clauses 298, 299, 300, 301 and 302 dealt with Standing Order 78A, and more particularly Clause 302 states as follows:

On the previous occasion the Human Rights Committee examined Sri Lanka's periodic report, it express concern on the compatibility of the impeachment process with the scope and spirit of Article 14, since it would compromise the independence of the judiciary. As stated above Article 107 a judge can be removed only on "proved grounds of misbehaviour or incapacity" and the standing orders allows for the judge in question defend himself either on his own or retaining a legal counsel, non adherence to the rules of natural justice by the inquiry committee would attract judicial review. Indeed nowhere either in the relevant constitutional provisions or the standing orders seek to exclude judicial scrutiny of the decisions of the inquiring committee. Thus, it is envisaged that if the inquiring committee were to misdirect itself in or breached the rules of natural justice its decisions could be subject to judicial review.

A true copy of the Standing Order 78A is filed herewith **marked P1(a)** and pleaded as part and parcel hereof.

- (d) in the circumstances the Government of Sri Lanka has represented that the decisions of the Select Committee appointed under Standing Order 78A would attract judicial scrutiny.
6. The Petitioner further states that the Respondents are estopped from denying that the decisions of the select committee are subject to judicial review and are estopped from denying that the Respondents are bound by judgments of competent courts exercising judicial review of the decision of the Select Committee.

BACKGROUND FACTS

7. The Petitioner states that
- (a) on or about 1st November 2012, a Notice of a Resolution purportedly under Article 107(2) of the Constitution signed by 117 Members of Parliament was handed over to the 1st Respondent seeking *inter alia* the removal of the Petitioner on the alleged grounds of misbehavior and/or incapacity. A true copy of the said resolution is filed herewith **marked P2** and pleaded as part and parcel hereof.
- (b) on or about 6th November 2012, the 1st Respondent caused the said Resolution to be published in the Order Paper of the Parliament of Sri Lanka and announced that a Select Committee comprising of 11 Members of Parliament will be appointed to investigate into the purported allegations contained in the said Resolution.
- (c) pursuant to the nominations made by the respective constituent parties of the Parliament, the following 11 members were appointed by the 1st Respondent to the said Select Committee on 14th November 2012

- (a) the 2nd to 8th Respondents representing the ruling United People's Freedom Alliance;
- (b) the 9th and 10th Respondents representing the United National Party;
- (c) the 11th Respondent representing the Illankai Tamil Arasu Kachchi; and
- (d) the 12th Respondent representing the Democratic National Alliance.

8. The Petitioner states that

- (a) at about 7.00 p.m. on 14th November 2012, the Petitioner received a letter dated 14th November, 2012 under the hand of the 13th Respondent informing the Petitioner of the aforesaid Notice of Resolution received by the 1st Respondent, the appointment of the 2nd to 12th Respondents to the purported Select Committee on 14th November 2012 to try the said charges and report to the Parliament and the meeting of the said purported Select Committee on 14th November 2012 and informing the Petitioner:
 - (a) to submit the Statement of Defence to the said purported charges contained in the Notice of Resolution on or before 22nd November 2012;
 - (b) to appear before the said purported Select Committee at 10.30 a.m. on 23rd November 2012 either personally or by representative.
- (b) the said letter dated 14th November 2012 had the purported charges included in the Notice of the Resolution as Attachment 1 and a copy of the Standing Order 78A as Attachment 2. A true copy of the said letter dated 14th November 2012 together with the said attachments are filed herewith **marked P3** and pleaded as part and parcel hereof.

9. The Petitioner states that the Petitioner appointed Messrs Neelakandan & Neelakandan as the Instructing Attorneys for the Petitioner and on the instructions of the Petitioner, the said Messrs Neelakandan & Neelakandan, without prejudice to the rights of the Petitioner including the right to object to the jurisdiction of the Select Committee, wrote to the 13th Respondent on 15th November, 2012, drawing attention to the fact that the Petitioner has only been given approximately a week's time to answer the purported charges and considering that there are fourteen purported charges, requesting six weeks time in order to enable the Petitioner to answer the said purported charges. A true copy of the aforesaid letter is filed herewith **marked P4** and pleaded as part and parcel hereof.

10. The Petitioner states by letter dated 16th November, 2012 the Petitioner requested the 13th Respondent to respond to the letter of Messrs Neelakandan & Neelakandan, nominated as the registered Attorneys of the Petitioner. A true copy of this letter is filed herewith **marked P5** and pleaded as part and parcel hereof.

11. Pursuant thereto on 17th November 2012, the Petitioner personally wrote to the 13th Respondent informing that the Petitioner received the letter dated 14th November 2012 of 13th Respondent only around 7 p.m. on 14th November 2012 allocating the Petitioner only approximately week's time to answer 14 purported charges and in the circumstances requesting six weeks time be granted in order to enable the Petitioner to answer the 14 purported charges. The Petitioner further requested 13th Respondent to respond to the

letters and grant the time requested. A true copy of this letter is filed herewith **marked P6** and pleaded as part and parcel hereof.

12. The Petitioner states that pursuant thereto the Petitioner received a letter dated 17th November 2012 from 13th Respondent informing the Petitioner that the Select Committee has ordered 13th Respondent to inform the Petitioner that -
- (a) the Petitioner must personally inform the Select Committee whether the Petitioner is appearing personally or by representative;
 - (b) if there is any request the Petitioner can forward such request after appearing before the Select Committee at 10.30 a.m. on 23rd November 2012;
 - (c) the Select Committee has decided not to accept the letter dated 15th November 2012 sent by Messrs Neelakandan & Neelakandan

A true copy of the said letter dated 17th November 2012 is filed herewith **marked P7** and pleaded as part and parcel hereof.

13. The 13th Respondent further by letter dated 19th November, 2012 informed the Petitioner, to forward any request after appearing before the Select Committee at 10.30 a.m. on 23rd November 2012. A true copy of which is filed herewith **marked P8** and pleaded as part and parcel hereof.

THE PETITIONER NOT AFFORDED SUFFICIENT TIME TO RESPOND TO THE PURPORTED CHARGES OR TO PREPARE HER DEFENCE

14. The Petitioner states that the purported Select Committee comprising of 2nd to 12th Respondents, as communicated by the letter of the 13th Respondent of 14th November 2012, received by the Petitioner approximately at 7.00 p.m. on 14th November 2012, arbitrarily and unreasonably only allowed the Petitioner time till 22nd November 2012 to respond to 14 purported charges.
15. The Petitioner states that all of the said 14 purported charges contained several factual matters on which the Petitioner had to instruct her lawyers for the preparation of the Statement of Defence and the approximate week's time allowed was grossly unreasonable and arbitrary.
16. The Petitioner states that repeated requests made by the Petitioner personally and through her lawyers for a reasonable extension time was arbitrarily disregarded by the purported Select Committee, who required the Petitioner to appear before the Select Committee on 23rd November 2012 and make the request personally.
17. The Petitioner states that in view of no proper procedure laid down for proceedings before the purported Select Committee, the Petitioner faced the risk of not having presented a defence in the event the 2nd to 12th Respondents refused the request of the Petitioner for further time and in the circumstances through abundance of caution the Petitioner was compelled to send a limited response to the purported charges. True copy

of the said limited response dated 20th November 2012 is filed herewith **marked P9** and pleaded as part and parcel hereof.

18. The Petitioner states that on the 23rd of November, 2012 the Petitioner appeared before the purported Select Committee and requested for further time and was given only a further week's time despite strong objection of her lawyers who steadfastly maintained that one week's time was not sufficient and that it was impossible to respond within such period.
19. The Petitioner states that the Petitioner only requested a reasonable time to adequately and fully answer the purported charges demonstrating that there was no factual or legal basis for the maintenance of the said purported charges and the farcical nature thereof. In the circumstances, the Attorneys-at-Law for the Petitioner sent another letter dated 29th November 2012 requesting further time. A true copy of the same is filed herewith **marked P9(a)** and pleaded as part and parcel hereof.
20. The Petitioner states that on 4th December, 2012, which was the next date of inquiry, the request of the Petitioner for further time was refused by the 2nd Respondent.
21. The Petitioner states that pursuant thereto on 6th December 2012, which was the next date at about 4 p.m. during the course of the proceedings of the purported Select Committee, a bundle of (over 80) documents which contained over 1,000 pages was handed over to the Counsel of the Petitioner. The Petitioner states that the request of the Counsel for the Petitioner for a reasonable time to study the said documents and prepare for the inquiry was wrongfully, unlawfully and arbitrarily refused by the 2nd to 8th Respondents and the Petitioner was informed that the inquiry into the charges 1 and 2 would be taken up for inquiry on the next day, namely 7th December, 2012 at 1.30 p.m. True copies of the proceedings of 23rd November 2012, 4th December 2012, 6th December 2012 and 7th December 2012 and the aforesaid documents handed over to the Petitioner are **marked P10(a), P10(b), P10(c), P10(d) and P11** respectively and are filed and pleaded as part and parcel of this petition.
22. The Petitioner states that in the circumstances, the Petitioner was not given sufficient time to prepare her defence and that the 2nd to 8th Respondents acted wrongfully, unlawfully and arbitrarily and in breach of the principles of natural justice.

BIAS

23. The Petitioner states that Hon. Dr. Rajitha Senaratne (the 5th Respondent) and Hon. Wimal Weerawansa (the 6th Respondent) were apparently biased against the Petitioner and therefore the Petitioner in her limited Response objected to the said 5th and 6th Respondents sitting in the Select Committee.

Hon. Rajitha Senaratne (the 5th Respondent)

24. The Petitioner states that
 - (a) on or about 26/08/2011, Dr. Sujatha Senaratne, the spouse of the 5th Respondent, instituted a Fundamental Rights Application in the Supreme Court bearing No. SCFR 357/2011;

- (b) after hearing the parties, the said application of Dr. Sujatha Senarathne was dismissed on 26th March 2012 by a bench of the Supreme Court presided by the Petitioner.

True copy of the said proceedings in SCFR 357/2011 is filed herewith **marked P12** and pleaded as part and parcel hereof.

25. The Petitioner states that during the proceedings of the Select Committee there was apparent bias on the part of the 5th Respondent and consequently the Counsel for the Petitioner during the proceedings of 4th December 2012 vehemently objected to the 5th Respondent taking part in the Select Committee proceedings.
26. The Petitioner states that after such submissions were made by the Counsel on behalf of the Petitioner, the 5th Respondent made the following observations which are set out in summary, during the course of the proceedings
- (a) the Petitioner has heard another case when the 5th Respondent was the Minister of Lands and held that case also against the 5th Respondent;
- (b) the 5th Respondent as a Member of Parliament objected to the appointment of the Petitioner as a Judge of the Supreme Court;
- (c) the 5th Respondent criticized not only the appointment of the Petitioner but also the person who backed her – the Hon. (Prof.) G.L. Peiris;
- (d) the 5th Respondent reminded Hon. (Prof.) G.L. Peiris at the Parliamentary Group meeting about the criticism;
27. The Petitioner states that in the circumstances the 5th Respondent was clearly and patently biased against the Petitioner.

Hon. Wimal Weerawansa (the 6th Respondent)

28. The Petitioner states that the Petitioner objected to the 6th Respondent on the ground of bias as set out in her limited statement of defence and also during the proceedings of the Select Committee there was apparent bias also on the part of the 6th Respondent and consequently the Counsel for the Petitioner during the proceedings of 4th December 2012 objected to the 6th Respondent taking part in the Select Committee proceedings.
29. The Petitioner states that the 6th Respondent has made statements in the media that unequivocally demonstrate that the 6th Respondent is clearly predisposed towards an adverse finding against the Petitioner including
- (a) report in the *Sri Lanka Mirror* citing the 6th Respondent as stating that the impeachment motion was brought against the Petitioner in order to end a clash between the executive and the legislature, which clash was precipitated by the Supreme Court communicating a Determination of the Court to the 13th Respondent, the Secretary General of Parliament, instead of the 1st Respondent and the said allegation forms part and parcel of the charges against the Petitioner.

- (b) an interview given to the *Rivira* newspaper, wherein the 6th Respondent indicates that the executive would have to take steps to neutralize a perceived conflict between the judiciary and the executive.
- (c) media reports that the 6th Respondent and/or the political party of the 6th Respondent has delayed preferring an application to the Supreme Court challenging the 13th Amendment in view of the pending impeachment motion

True copies of the said newspaper reports are filed herewith collectively **marked P13** and pleaded as part and parcel hereof.

- 30. In the circumstances Hon. Wimal Weerawansa was clearly and patently biased against the Petitioner.
- 31. The Petitioner states that on 6th December 2012, the 2nd Respondent informed the Petitioner that the Committee is not accepting the objection against the 5th and 6th Respondents on the grounds of bias, without giving any reasons for the said decision. The Petitioner states that though the 2nd Respondent indicated that he would be giving the reasons for the decision subsequently, no reasons have been given to the Petitioner for the said decision thus far.
- 32. The Petitioner further states that the 9th to 12th Respondents expressly states that they were not consulted regarding the said decision and in the circumstances it is apparent that the 2nd to 8th Respondents have on their own made the said decision disregarding and without consulting the 9th to 12th Respondents who are members of the purported Select Committee.

NO PROCEDURE LAID DOWN

- 33. The Petitioner states that the Petitioner was not informed of the procedure intended to be followed by the Select Committee despite repeated requests of the Counsel for the Petitioner.
- 34. The Petitioner states that the 2nd to 8th Respondent, without consulting or the concurrence of the 9th to 12th Respondents, were adopting *ad hoc* and arbitrary procedure unknown to law with regard to
 - (a) the production and admission of the documents;
 - (b) proof of such documents;
 - (c) burden of proof;
 - (d) lists of witnesses ;
 - (e) admission of evidence etc.
- 35. The Petitioner states that the 2nd to 8th Respondents were consistently taking decisions without even consulting the 9th to 12th Respondents who were also members of the purported Select Committee and the said 9th to 12th Respondents were openly critical of such behavior of 2nd to 8th Respondents.

NO LIST OF WITNESSES

36. The Petitioner states that
- (a) the lawyers representing the Petitioner repeatedly requested the purported Select Committee for a list of witnesses and documents for the Petitioner to prepare for the examination of such witnesses and but were not given.
 - (b) despite such repeated requests the list of witnesses was not provided to the Petitioner and as far as the Petitioner gathered from the proceedings the 9th to 12th Respondent were also unaware as to whether any witnesses were being called to give evidence.
 - (c) during the course of the proceedings of the purported Select Committee on 6th December 2012, at about 4 p.m., a bundle of (over 80) documents which contained over 1000 pages was handed over to the Counsel of the Petitioner and despite the request of the Counsel for the Petitioner for a reasonable time to study the said documents and prepare for the inquiry, the Petitioner was informed that the inquiry into the charges 1 and 2 would be taken up for inquiry on the very next date, namely 7th December, 2012 at 1.30 p.m.
 - (d) the Petitioner was further informed that there would be no oral testimony in respect of the above documents and despite the objection of the Counsel for the Petitioner that documents has to be produced through witnesses and from proper custody the said submission was disregarded by the 2nd to 8th Respondents.

BURDEN OF PROOF

37. The Petitioner states that the Petitioner was not given the right or the opportunity of cross examining the accusers or any of the witnesses by producing the documents through the 13th Respondent.
38. The Petitioner further states that the 2nd to 8th Respondents in clear violation of Article 13(5) of the Constitution informed the Petitioner citing Standing Order 78A(5) that the burden of disproving was on the Petitioner.

REQUEST FOR PUBLIC HEARING

39. The Petitioner states that the Counsel for the Petitioner in view of the ad hoc and arbitrary manner in which the 2nd to 8th Respondent were conducting the proceedings of the purported Select Committee requested a public hearing, waiving the secrecy provision contained in Standing Order 78A(8) drawing the attention to the fact that the said provision is so included to protect the Respondent Judge.
40. The Petitioner states that the said request of the Petitioner was refused by the 2nd Respondent.

- 41.
- (a) The Petitioner then requested that there should be observers present at the inquiry and that the presence of the observers will not violate the secrecy provision.
 - (b) The Petitioner further submitted that the Select Committee could use its discretion in deciding who the observers should be and suggested that the observers should include *inter alia* the Bar Association of Sri Lanka and the International Bar Association.
42. The Petitioner states that the said request for observers was also refused by the 2nd Respondent.
43. The Petitioner states that it was important that the proceedings be open to the public so that the public and interested parties will be able to gauge or determine the manner and procedure followed.

DECISIONS TAKEN BY THE CHAIRMAN (THE 2ND RESPONDENT)

44. The Petitioner states that decisions were taken by the 2nd Respondent sometimes without proper consultation and in some instances without the knowledge of the members of the Select Committee, especially the 9th to 12th Respondents.
45. The Petitioner further states that the Chairman has instructed the 13th Respondent to call for documents which instructions have been made without the knowledge of all the members of the Select Committee.
46. The Petitioner pleads that in the circumstances the procedure followed is unlawful, unreasonable, arbitrary and capricious.

THE PETITIONER WAS INSULTED

47. The Petitioner states that the Petitioner was insulted by several Government members of the PSC, and the Petitioner files herewith a true copy of the letter dated 14/12/2012 sent by her lawyers to the Hon. Speaker **marked P14** and pleads as part and parcel hereof.
48. The Petitioner pleads that the statements made by the Government members of the PSC were clearly actuated by a prejudged mind and were clearly manifested such prejudged state by the conduct and utterances made.

WALK OUT BY THE PETITIONER

49. The Petitioner states that –
- (a) 117 members who signed the impeachment motion come under the jurisdiction of the government whip;
 - (b) 2nd to 8th Respondents who constituted a majority of the Select Committee come under the government whip ;
 - (c) the government whip is a member of the cabinet which is under His Excellency the President to whom the motion for impeachment would be submitted;

- (d) majority of the Members of the Parliament come under the government whip.
50. The Petitioner states that the 2nd to 8th Respondents were conducting the proceedings of the purported Select Committee in an unreasonable, unlawful, *ad hoc*, manifestly unfair and an arbitrary manner in beach of the principles of natural justice.
51. The Petitioner states that it was apparent that the 2nd to 8th Respondents had prejudged the case and were in a hurry to find the Petitioner guilty.
52. The Petitioner states that it became apparent that the Petitioner would not receive justice in the Select Committee and in the circumstances set out above the Petitioner and her lawyers walked out of the proceedings of the purported Select Committee on 6th December 2012 at approximately 5.50 p.m.

AFTER THE WALK OUT

53. The Petitioners Attorneys at Law sent a letter dated 7th December 2012 to the 1st Respondent *inter-alia*, requesting that further action be deferred until an independent and impartial panel is appointed to inquire into the allegations. The Petitioner further reiterated that the Petitioner is absolutely innocent of the allegations and is convinced that the Petitioner will be exonerated of any wrongdoing by an independent and impartial tribunal. A true copy of the same is filed herewith **marked P15** and pleaded as part and parcel hereof.
54. The Petitioner states that the Petitioner is made aware that the purported Select Committee has met as scheduled at 1.30 p.m. on 7th December, 2012 and that at the said meeting the 9th to 12th Respondents have stated tabling a letter to the Select Committee that
- (a) the Petitioner was not afforded the courtesies and privileges due to the office of Chief Justice;
 - (b) it is the duty of the Select Committee to maintain the highest standards of fairness in conducting the inquiry;
 - (c) the treatment meted out to the Petitioner was insulting and intimidatory and the remarks made were very clearly indicative of preconceived findings of guilt
 - (d) the 9th to 12th Respondents are of the view that the Committee should before proceeding any further lay down the procedure the Committee intends to follow in this inquiry;
 - (e) give adequate time for the Petitioner and her lawyers to study and review the documents tabled
 - (f) afford the Petitioner privileges necessary to uphold the dignity of the office of Chief Justice
55. The Petitioner states that the Petitioner learnt from newspaper reports that pursuant thereto the 9th to 12th Respondents have withdrawn from the Select Committee due to the refusal of the 2nd to 8th Respondents to accede to the aforesaid request made by the 9th to

12th Respondents. A true copy of the press statement issued by the Opposition members is filed herewith **marked P16** and pleaded as part and parcel hereof.

56. The Petitioner states that after the Petitioner walked out of the proceedings, and after the withdrawal of the 9th to 12th Respondents from the proceedings, the 2nd to 8th Respondents in an about face hurriedly summoned and examined 16 witnesses during the course of 7th December 2012 sitting till 8.50 p.m.
57. The Petitioner states that upon the withdrawal of the 9th to 12th Respondents, four vacancies are created in the purported Select Committee appointed by the 1st Respondent and in the circumstances the said purported Select Committee became *functus officio*. The Petitioner reiterates that there is no provision in the Standing Orders of the Parliament for a purported Select Committee appointed under Standing Order 78A to continue functioning notwithstanding any vacancy created in such Committee.
58. The Petitioner states that notwithstanding the vacancy created by the withdrawal of the 9th to 12th Respondents as aforesaid the 2nd to 8th Respondents wrongfully, unlawfully continued to function *ultra vires* of the Standing Orders of the Parliament.

CALLING OF WITNESSES BY THE 2ND TO 8TH RESPONDENTS

59. The Petitioner states that the Petitioner was not informed of any decision by the purported Select Committee to call any witnesses during the proceedings of 6th December 2012 until the withdrawal of the Petitioner from the said proceedings at approximately 5.50 p.m. The Petitioner states that despite the repeated requests of the Counsel for the Petitioner, even on 6th December 2012, the purported Select Committee or the 2nd to 8th Respondents did not inform the Petitioner that the Select Committee was calling any witnesses on 7th December 2012 and did not provide the Petitioner with a list of witnesses. The Petitioner states that the Petitioner was in fact specifically informed that no witnesses would be called by the purported Select Committee since all evidence are documentary and that the burden was on the Petitioner to disprove the charges by calling witnesses.
60. The Petitioner verily believes that 9th to 12th Respondents were unaware of any such decision by the 2nd to 8th Respondents to call witnesses prior to their withdrawal from the proceedings on 7th December 2012 despite being members of the said purported Select Committee.
61. In fact, the Petitioner verily believes that these witnesses were summoned at the eleventh hour knowing well that they will not be cross-examined, because the Petitioner had walked out of the proceedings.
62. The Petitioner states that on 8th December 2012 the 2nd to 8th Respondents have compiled a purported report wrongfully, unlawfully and unconstitutionally finding the Petitioner guilty of charges 1, 4 and 5. A true copy of the said Purported Report is filed herewith **marked P17** and pleaded as part and parcel hereof. The Report was available only on the 17/12/2012 in the afternoon. The Petitioner specifically pleads that the Petitioner was not given what was called the minutes of the tribunal and /or the deliberations of the Committee at any given time while the Petitioner was participating at the inquiry.

63. The Petitioner states that the said purported finding of guilt of the Petitioner by the 2nd to 8th Respondents of charges 1, 4 and 5 is wrongful, unlawful, against the weight of the evidence and without any legal or factual basis.
64. The petitioner states in her response she asked for details/particulars of the several charges which the Respondents refused to give.

CHARGE NUMBER 1

65. The Petitioner states that the Charge No. 1 against the Petitioner reads as follows;

“Whereas by purchasing, in the names of two individuals, i.e. Renuka Niranjali Bandaranayake and Kapila Ranjan Karunaratne using special power of attorney licence bearing No. 823 of Public Notary K.B. Aroshi Perera that was given by Renuka Niranjali Bandaranayake and Kapila Ranjan Karunaratne residing at No. 127, Ejina Street, Mount Hawthorn, Western Australia, 6016, Australia, the house bearing No. 2C/F2/P4 and assessment No. 153/1-2/4 from the housing scheme located at No. 153, Elvitigala Mawatha, Colombo 08 belonging to the company that was known as Ceylinco Housing and Property Company and City Housing and Real Estate Company Limited and Ceylinco Condominium Limited and is currently known as Trillium Residencies which is referred in the list of property in the case of fundamental rights application No. 262/2009, having removed another bench of the Supreme Court which was hearing the fundamental rights application cases bearing Nos. 262/2009, 191/2009 and 317/2009 filed respectively in the Supreme Court against Ceylinco Sri Ram Capital Management, Golden Key Credit Card Company and Finance and Guarantee Company Limited belonging to the Ceylinco Group of Companies and taking up further hearing of the aforesaid cases under her court and serving as the presiding judge of the benches hearing the said cases”

66. The Petitioner states that:

(a)

- (i) the aforesaid housing unit bearing No. 2C/F2/P4 and assessment No. 153/1-2/4 Trillium Residencies was not purchased by the Petitioner and/or using the special power of attorney bearing No. 823 of Public Notary K.B. Aroshi Perera;
- (ii) the said property was purchased by Renuka Niranjali Bandaranayake and Kapila Ranjan Karunaratne by the monies remitted by Renuka Niranjali Bandaranayake and Kapila Ranjan Karunaratne from Australia.

The Petitioner files herewith the documentation from the bank in evidence thereof **marked P17(c) to P17(o)** respectively and pleads as part and parcel hereof.

(b)

- (i) as far back as 6th May 2010, (i.e. nearly 16 months prior to the Petitioner hearing the case) the sale of housing units of the Trillium Residencies had been excluded from the Fundamental Rights Application bearing No. 262/2009.

The Petitioner sets out hereunder an extract of the proceedings of 6th May 2010 which reads as follows-

“ The Court also directs the Committee of Chartered Accountants to pursue all negotiations for the sale of other properties by advertising and calling for quotations with a view to obtaining the highest going prices on these properties.No properties to be alienated without the express permission of this Court. For the moment, ...the properties to be disposed would be:-

(1) pioneer tower (head office building)

*(2) **trillium residencies (sale of housing units)***

(3) celestial residencies...”

(ii) no permission of Court has been sought in relation to sale of the said housing units of Trillium Residencies after 6th May 2010, despite a number of such housing units of Trillium Residencies being sold.

(c) the Petitioner did not remove another bench that was hearing the Fundamental Rights Application cases bearing Nos. 262/2009, 191/2009 and 317/2009..

67.

(a) The Petitioner states that by Deed No.2876 dated 12/05/2012 attested by D.A.P. Weeratne Notary Public, an apartment of Trillium Residencies bearing No. 1C/F7/P4 was transferred to the former Chief Justice J.A.N. De Silva and his daughter R.K.I. de Silva Balapatabendi.

(b) The Petitioner states that to the best of her knowledge no permission was sought, obtained or required for the transfer of the said premises.

68. In the circumstances the Petitioner states that it was known and accepted that after the aforesaid order and the other orders made by a Bench presided by Justice Shiranee Tilakawardane no permission of the Supreme Court was necessary for the transfer of the said property (Trillium apartments).

69. In the circumstances the Petitioner states that as at the date the case came before a bench of which she presided all apartments in Trillium Residencies could be transferred without the permission of the Supreme Court.

70. In the circumstances, the Petitioner states that being guilty of the charge is *ex facie* wrong.

71. The Petitioner states that her sister did not receive any special concession. The concessions of purchase price may have been offered and taken by several of the purchasers and no special concessions offered to the Petitioner’s sister.

72. The Petitioner states for the aforesaid reasons finding of guilt against her cannot be sustained.

73. Without prejudice to the aforesaid the Petitioner states that herewith the following.

74. The Petitioner states that

(a) a motion was filed by a depositor /intervenient –petitioner in SCFR 191/2009 on or about 19/08/2011 asking that a bench of 5 Judges be constituted;

- (b) when the matter was referred to Justice Shiranee Tilakawardane, Justice Shiranee Tilakawardane referred the same to the Petitioner;
 - (c) in the circumstances, the Petitioner referred it back to the same bench that heard the case, thereafter the matter was never referred to the Petitioner for consideration of whether a Bench of five Judges should be constituted
 - (d) that Justice Shiranee Tilakawardane did not refer the matter to the Petitioner for a constitution of a Bench of five Judges and there was no such minute in the file.
 - (e) In the circumstances the constitution of the Bench of five Judges never came up before the Petitioner.
 - (f) In the circumstances the order of the Select Committee is *ex facie* wrong.
75. The Petitioner states further in answer to the said charge without prejudice to the aforesaid.
76. The Petitioner states that –
- (a) there were several allegations against Justice Shiranee Tilakawardane which is not relevant to be repeated here.
 - (b) Judges refused to sit with Justice Tilakawardane in this matter as is evidenced by the evidence of Justice Tilakawardane.
 - (c) further allegations were made that Justice Tilakawardane met with some members of the Watawala Commission alone in her chambers without any of the other Judges and/or any counsel and that neither counsel nor other Judges were aware of the discussion.
 - (d) The Petitioner further states that the Watawala Commission had been paid approximately Rs.40 million allegedly for work done. This money was in fact meant for repayment to depositors.
77. In the aforesaid circumstances the Petitioner having considered all the facts and circumstances and after having consulted senior Judges of the Supreme Court, constituted a Bench chaired by her with two other senior judges to hear and determine the case.
78. The Petitioner pleads that at no time did any person protest that the case was taken out of Justice Tilakawardane and or heard by her.
79. The Petitioner states
- (a) that case came up on several occasions.
 - (b) Several hundred depositors were present in court
 - (c) most if not all depositors were represented by Counsel.
 - (d) The Respondents were represented by counsel,
 - (e) the Watawala Commissioners were present in court,
 - (f) the Hon. Attorney General was represented.
 - (g) None of such persons ever protested that the case was either wrongfully taken and/or that it should not be heard by the Petitioner.

80. In the circumstances, the Petitioner states that it is not only wrongful but also malicious to conclude that the Petitioner wrongfully took over the case.
81. In any event the Petitioner states that to the best of the Petitioner's recollection a Bench presided by the Petitioner did not alter in any way the orders previously made.
82. The Petitioner further states that the Petitioner did not make any order except purely routine orders in the said case.
83. In these circumstances the Petitioner states that the taking of the case was not only not wrongful but correct and in any event did not in any way or manner affect the purchase of the premises by her sister.
84. The Petitioner states that in the aforesaid circumstances, the alleged finding of the 2nd to 8th Respondents that the Petitioner is guilty of the aforesaid Charge 1 is wrongful, unlawful, arbitrary, against the weight of the evidence and without any legal or factual basis.

CHARGE NUMBER 4

85. The Petitioner states that Charge No. 4 against the Petitioner reads as follows;
- “Whereas, by not declaring in the annual declaration of assets and liabilities that should be submitted by a judicial officer the details of more than twenty bank accounts maintained in various banks including nine accounts bearing numbers 106450013024, 101000046737, 100002001360, 100001014772, 100002001967, 100101001275, 100110000338, 100121001797 and 100124000238 in the aforesaid branch of NDB Bank”*
86. The Petitioner states that the 13th Respondent wrote to almost all commercial banks inquiring about the Petitioner's Accounts and the evidence reveals that the Petitioner from 2010 had no operative accounts in any other bank except the NDB Bank.
87. In the circumstances the charge that the Petitioner had accounts in various banks is incorrect.
88. Furthermore the evidence reveal that as at 31st March 2012 the Petitioner had only 4 active/operative accounts and that the NDB Bank had maintained 2 routing accounts as per the standard internal banking practice at the NDB Bank in the name of the Petitioner as morefully explained hereinafter.
89. The purported Report does not set out how many Bank accounts the Petitioner had. The Petitioner sets out hereinunder from paragraph 92 onwards the accounts mentioned in the charge.
90. The Petitioner sets out hereinunder the bank account dealt in the report.
91. In the circumstances it is apparent that the Petitioner has made true and correct declaration of assets and liabilities.

92. The Petitioner states that of the accounts referred to in the above Charge No. 4:
- (a) Account No. 106450013024 was opened on or about 6th April 2011 with National Development Bank PLC (NDB Bank) and has been **duly declared** in the relevant declaration of Assets and Liabilities dated 31st March 2012.
 - (b) Account No. 101000046737 had been **duly declared** in the relevant declaration of Assets and Liabilities of the Petitioner.
 - (c) Account No. 100002001360 is a Special Current Account created by NDB Bank for the purpose of routing investments.
 - (d) Account No. 100001014772 is an old Account No. which has been migrated due to a IT System change by NDB Bank to Account No. 10100046737 referred to above.
 - (e) Account No. 100002001967 is a Special Current Account created by NDB Bank PLC for the purpose of routing investments.
 - (f) Account No. 100101001275 had been closed by the Petitioner in the year 2008.
 - (g) Account No. 100110000338 is an old Account No. which has been migrated due to a IT System change by NDB Bank to Account No. 106160005893 referred to above and has been **duly declared** by the Petitioner.
 - (h) Account No. 100121001797 is an old Account No. which has been migrated by NDB Bank to Account No. 106450000542 and has **been declared** by the Petitioner.
 - (i) Account No. 100124000238 is an old Account No. which has been migrated by NDB Bank to Account No. 106450013024 referred to above and has **been declared** by the Petitioner.
93. The Petitioner states that of the 9 accounts referred to in the Charge No. 4,
- (a) there is in truth and in fact only 7 accounts whilst the other 2 accounts are old account numbers of 2 of the Accounts migrated due to a IT System change by NDB Bank.
 - (b) of the said 7 accounts, 2 are special routing accounts (as opposed to regular current accounts) maintained by the NDB Bank for investment purposes in terms of standard internal banking practice at the NDB Bank and these are not regular current accounts. **These routing accounts could be operated only by the NDB Bank** as and when necessary. When the investments mature the funds will be credited along with the interest and thereafter the capital and the interest will be re-invested by the Bank as per the standing instructions of the customer based on the financial advice given by the NDB Bank with regard to the investment. The Petitioner verily believes the funds in the account are credited to the account at the end of an investment cycle when the matured investment is credited pending reinvestment and during the maturity period of the investment these routing accounts carry zero balances.
 - (c) 1 other account bearing No. 1001011001275 has been closed in 2008.

(d) thus only 4 of the 9 Accounts referred to in the said Charge 4, were regular operational Accounts and the Petitioner has duly declared the said Accounts in the relevant Asset Declarations.

94. The Petitioner states that, in the aforesaid purported Report of the 2nd to 8th Respondents the 2nd to 8th Respondent have referred to the following accounts though some of them were not included in the said Charge 4. The said Accounts are:

Account No. 1

Account No. 100002001360 is a Special Current Account created by NDB Bank PLC for the purpose of routing investments. The said Account has been migrated by NDB Bank to Account No. 10111002058. (*Account No. 7 referred to below*)

Account No. 2

Account No. 100002001967 is a Special Current Account created by NDB Bank PLC for the purpose of routing investments. The said Account has been migrated by NDB Bank to Account No. 10110002778.

Account No. 3

Account No. 100121001797 has been migrated by NDB Bank to Account No. 106450000542. This account is an account in US Dollars which was opened on 2nd September 2008 and the money was transferred to a fixed deposit in 2009. The fixed deposit was duly declared in the declaration of Assets and Liabilities. This account had zero balance from 2009.

Account No. 4

Account No. 106110012694 was opened on 26th April 2012 and thus could not have been declared in any of the declaration of assets and liabilities.

Account No. 5

Account No. 106110012128 was opened on 20th April 2012 and thus could not have been declared in any of the declaration of assets and liabilities.

Account No. 6

Account No. 100124000238 has been migrated by NDB Bank to Account No. 106450013024 was opened on 6th April 2011 and was declared in the declaration of Assets and Liabilities as at 31st March 2012. The said Account could not have been declared in the declaration of as at 31st March 2011 because it was opened in April 2011.

Account No. 7

Account No. 1001110002058 is the migrated Account No. 100002001360 referred to under Account No. 1 above.

Account No. 8

Account No. 100100039660 has been migrated by NDB Bank to Account No. 106000134433 and has been duly declared in the Declarations of Assets and Liabilities for the years ending 31st March 2010, 2011 and 2012. As is evident from the Report itself and should have been evident to anyone who read the report that the transactions in the said Account commenced in November 2009 and thus could not have been declared in years ending 31st March 2007 or 2008.

95. The Petitioner states that of the 8 accounts referred to above
- (a) Account No. 7 is the new Account Number of the migrated and redundant old account referred to under Account No. 1.
 - (b) Accounts 1, 2 and 7 are special routing accounts (1 and 7 being the same) maintained by the NDB Bank for investment purposes as per standard internal banking practice of the NDB Bank as morefully described above. The said Accounts do not form part of the Assets or liabilities of the Petitioner as the said Accounts maintained by the NDB Bank as per internal banking practice. The Petitioner states that the Petitioner has duly declared the Investment Assets relating to such routing accounts in the relevant Asset Declarations under the category of 'Treasury Bills'.
 - (c) Accounts 4 and 5 were opened in the year 2012 and therefore could not have been disclosed in any Asset Declaration.
 - (d) Accounts 3, 6 and 8 have been duly declared in the relevant Asset Declarations.
96. The Petitioner categorically states that the evidence reveal that the Petitioner has disclosed all her assets and liabilities and the said evidence does not disclose any asset and/or liability not declared by the Petitioner in the relevant Declarations of Assets and Liabilities of the Petitioner.
97. The Petitioner states that the 2nd to 8th Respondents have wrongfully concluded that the Petitioner had not disclosed the routing accounts maintained by NDB Bank without properly understanding the nature of such accounts. The Petitioner reiterates that the Petitioner has duly declared the Investment Assets relating to such routing accounts in the relevant Asset Declarations.
98. The Petitioner further states that the 2nd to 8th Respondents have wrongfully concluded that the Petitioner has not disclosed Accounts 4, 5, and 8 referred to in the purported Report which were not in operation by reason that the Petitioner has only opened such accounts after such relevant date of disclosure in the respective years. The Petitioner annexes hereto **marked P18** the letter dated 19th November 2012 addressed to Messrs Neelakandan & Neelakandan by NDB Bank setting out the details of bank accounts held by the Petitioner.
99. The Petitioner states that in the circumstances the evidence cogently establish that the Petitioner has duly, properly, truthfully and correctly disclosed all assets and liabilities as at the end of each reporting period as required by law.
100. The Petitioner states that the purported report of the 2nd to 8th Respondents has:
- (a) failed to consider that the evidence reveal that
 - (i) the Petitioner, in fact had only Six (6) bank accounts with NDB Bank including 2 accounts opened after 31st March 2012.
 - (ii) the Petitioner did not have and/or maintain 20 bank accounts.

- (iii) the Petitioner has not had any operative accounts in any bank other than the NDB Bank since 2010.
 - (b) wrongfully concluded that the evidence that
 - (i) the Petitioner maintained 13 accounts with NDB Bank.
 - (ii) the Petitioner has not disclosed all operative bank accounts of the Petitioner in the relevant Declarations of Assets and Liabilities of the Petitioner.
101. In the circumstances, the Petitioner states that
- (a) the said Charge 4 annexed to document marked P3 has not been duly proved.
 - (b) the Petitioner is *ex facie* not guilty of Charge 4 annexed to document marked P3.
102. In the said circumstances the alleged finding of the 2nd to 8th Respondents that the Petitioner is guilty of the aforesaid charge is wrongful, unlawful, arbitrary and against the weight of the evidence and without any legal or factual basis.
103. For more clarity and transparent the Petitioner states that the Petitioner has duly ,properly and correctly declared all her assets and investments in the relevant assets and liabilities declarations and in any event the Petitioner could not have declared the investments in the routing accounts under accounts catagory for the simple reason the Petitioner has to declare her investments under investments category. If the Petitioner was to declare the transactions in the routing accounts, there would have been duplicate (double) entries.

CHARGE NUMBER 5

104. The Petitioner states that Charge No. 5 against the Petitioner reads as follows;

Whereas, Mr. Pradeep Gamini Suraj Kariyawasam, the lawful husband of the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake is a suspect in relation to legal action initiated at the Magistrate's Court of Colombo in connection with the offences regarding acts of bribery and/or corruption under the Commission to Investigate into Allegations of Bribery or Corruption Act, No 19 of 1994;

Whereas, the post of Chairperson of the Judicial Service Commission which is vested with powers to transfer, disciplinary control and removal of the Magistrate of the said court which is due to hear the aforesaid bribery or corruption case is held by the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake as per Article 111D (2) of the Constitution;

Whereas, the powers to examine the judicial records, registers and other documents maintained by the aforesaid court are vested with the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake under Article 111H (3) by virtue of being the Chairperson of the Judicial Service Commission;

Whereas, the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake becomes unsuitable to continue in the office of the Chief Justice due to the legal action relevant to the allegations of bribery and corruption levelled against Mr. Pradeep Gamini Suraj Kariyawasam, the

lawful husband of the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake in the aforesaid manner, and as a result of her continuance in the office of the Chief Justice, administration of justice is hindered and the fundamentals of administration of justice are thereby violated and whereas not only administration of justice but visible administration of justice should take place;

105. The Petitioner states that *ex facie* the said Charge is bad in law and cannot be sustained since the said charge probabilities and surmises and not on any factual occurrences.
106. The Petitioner categorically states that there was **no matter** concerning the Chief Magistrate that came up before the Judicial Services Commission after the Petitioner's husband was charged in the Magistrate's Court.
107. The Petitioner further states that the said purported charge cannot in any event be a ground for proved misbehaviour in the absence of any allegation that the Petitioner has in fact conducted herself in a manner unbecoming of a Judge of the Superior Courts in relation to the said Charge.
108. Without prejudice to the above, the Petitioner states that *ex facie* the finding of the Select Committee are false, based on probabilities and surmises, wrongful, unlawful, against the weight of the evidence and without any legal or factual basis.
109. The Petitioner states that the purported report of the 2nd to 8th Respondents have concluded that there is insufficient evidence to find the Petitioner guilty of charges 2 and 3 and therefore the 2nd to 8th Respondents have not come to any conclusion with regard to the said charges.
110. In the circumstances the Petitioner states that despite the aforesaid arbitrary investigation conducted *ex parte* by the 2nd to 8th Respondents, without adhering to the rule of law and principles of natural justice, on the own admission of the 2nd to 8th Respondents there is insufficient evidence even by the very negligible standard proof adopted by the said Respondents to establish the said charges 2 and 3 relating to an alleged sum of Rs. 34 Million in foreign currency being received by the Petitioner, which the Petitioner has allegedly not declared in the relevant asset declarations.
111. The Petitioner states that the purported report of the 2nd to 8th Respondent have not addressed the purported charges 6 to 14 and have not come to any conclusion in respect of the said charges.
112. The Petitioner states that thus and otherwise
 - (a) the purported exercise of judicial power by the Select Committee appointed under Standing Order 78A is contrary to Article 4(c) of the Constitution;
 - (b) the Petitioner in the limited response dated 20th November 2012 took up the objection that the Parliament by standing orders confer itself judicial power and therefore the purported Select Committee has no jurisdiction to hold the purported inquiry.

113. The Petitioner states that the purported exercise of the judicial power by the Select Committee is unconstitutional and therefore any findings of the said purported Select Committee has no force or effect in law.
114. In the aforesaid circumstances the Petitioner states that
- (a) exercise of judicial power by the purported Select Committee is unconstitutional;
 - (b) functioning of the 2nd to 8th Respondents as the purported Select Committee notwithstanding the vacancy created by the withdrawal of the 9th to 12th Respondents is wrongful, unlawful and *ultra vires* of the Standing Orders of the Parliament.
 - (c) the Petitioner was deprived of a fair hearing;
 - (d) In the aforesaid circumstances the Petitioner pleads that the 2nd to 8th Respondents of the Select Committee -
 - (i) failed to adhere to the rule of law ;
 - (ii) breached the rules of natural justice
 - (iii) acted unreasonably, and/or capriciously and/or arbitrarily
 - (iv) had prejudged the issue.
115. In the aforesaid circumstances the Petitioner pleads that there had been procedural irregularity in the manner in which the Select Committee conducted its affairs.
116. The Petitioner further states that:
- (a) the Parliament (Powers and Privileges) Act No. 21 of 1953 as amended affords no protection to the aforesaid unconstitutional and *ultra vires* acts of the 2nd to 12th Respondents complained hereof;
 - (b) the judiciary is the only Institution entrusted with the onerous task of keeping every organ of State within the limits of the law and thereby making the Rule of Law enshrined in the Constitution meaningful and effective.
 - (c) the Government of Sri Lanka has represented that the decisions of the Select Committee appointed under Standing Order 78A would attract judicial scrutiny in the periodic report submitted by the Government of Sri Lanka to the Human Rights Committee appointed under and in terms of the International Covenant on Civil & Political Rights.
117. For a fuller disclosure the Petitioner states that when the impeachment motion was presented to Parliament wide publicity was given to it in the media and therefore the Petitioners Attorneys-at-Law addressed a letter to the media, a true copy of which is filed herewith **marked P19** and pleaded as part and parcel hereof.
118. The Counsel for the Petitioner also issued statements to the media on or about 07/12/2012 and 12/12/2012, and true copies of which are filed herewith **marked P20(a) and P20(b)** respectively and pleaded as part and parcel hereof.

119. The Petitioner also annexes hereto compendiously **marked P21** the several documents the Counsel tendered to the Tribunal on 4th December 2012 marked 'A1' to 'A11(b)' and pleads the same as part and parcel hereof.
120. The Petitioner respectfully states that irremediable mischief and irreparable damage would be caused to the Petitioner and the independence and the integrity of the judiciary and to the institutions of justice if the interim order prayed for are not granted. The Petitioner states that the resolution for the removal of the Petitioner based on the purported report P17 is due to be taken up for debate on 8th January 2013.
121. The Petitioner respectfully states that the report P17 was available only in the afternoon of the 17th December 2012, and seeks the indulgence of Court to tender any documents that are necessary and presently not in the hands of the Petitioner at a subsequent stage as and when she obtains the same.
122. In the circumstance the Petitioner respectfully states that the Petitioner is entitled to seek;
- (a) a mandate in the nature of Writ of Certiorari quashing the report of the 2nd to 8th Respondents marked as P17.
 - (b) a mandate in the nature of Writ of Prohibition, prohibiting the 1st Respondent from acting on and or taking any further steps based on the purported report marked as P17.
 - (c) an Interim Order restraining the 1st Respondent from acting on and or taking any further steps based on the purported report marked as P17 until the hearing and determination of this Application by Your Lordships' Court.
123. The Petitioner states that the Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of the subject matter of this Application.
124. An Affidavit of the Petitioner is appended hereto in support of the averments contained herein.

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

- (a) issue Notice on the Respondents;
- (b) grant a mandate in the nature of Writ of Certiorari quashing the findings and/or the decision of the report of the 2nd to 8th Respondents marked as P17 and/or quashing the said report marked as P17;

- (c) grant a mandate in the nature of Writ of Prohibition, prohibiting the 1st Respondent and/or 2nd to 13th Respondents from acting on and or taking any further steps based on the purported report marked as P17;
- (d) grant an Interim Order restraining the 1st Respondent and/or 2nd to 13th Respondents from acting on and or taking any further steps based on the purported report marked as P17 until the hearing and determination of this Application by Your Lordships' Court;
- (e) grant an Interim Order restraining the 1st Respondent and/or 2nd to 13th Respondents from taking any further steps consequent to the purported report marked as P17 until the hearing and determination of this Application by Your Lordships' Court;
- (f) grant an Interim Order staying the effect of the purported report P17 and/or staying any further action based on the said purported report P17;
- (g) grant costs; and
- (h) grant such other and further reliefs as to Your Lordships Court shall seem meet.

REGISTERED ATTORNEYS FOR THE PETITIONER

Settled by:

Eraj de Silva Esq.

Attorney-at-Law

Shanaka Cooray Esq.

Attorney-at-Law

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