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

In the matter of an application under Article 126 of the Constitution read with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Dudeesha Duminda Nagamuwa

41/32,

Palaweni Mawatha (First Avenue),

Kendhahenewaththa Road,

Depanama,

Pannipitiya

Petitioner

SC (FR) Application No:

-v-

1. Percy Mahendra Rajapaksa

Former President of the Democratic Socialist Republic of Sri Lanka

Carlton, Mahawela Road,

Tangalle.

2. Lieutenant General Daya Ratnayake

Commander of the Sri Lanka Army,

Army Headquarters,

Colombo 00300

3. Vice Admiral Jayantha Perera

Commander of the Sri Lanka Navy
Naval Headquarters,
Colombo

4. Air Marshal Kolitha A. Gunatilleke

Commander of the Sri Lanka Air Force,
Sri Lanka Air Force Headquarters,
Colombo 00200

5. Mahinda Deshapriya

Commissioner of Elections
Elections Secretariat,
Sarana Mawatha,
Rajagiriya, 10107.

6. N.K. Illangakoon

Inspector General of Police,
Police Headquarters,
Colombo 00100

7. Hon. Attorney General,

Attorney General's Department,
Colombo 01200

Respondents

On this 30th day of January 2015

**TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS THE OTHER
HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

The Petition of the Petitioner above-named appearing by his Registered Attorney-at-Law, Lalith Gunarathne states as follows:

1. The Petitioner is a citizen of the Democratic Socialist Republic of Sri Lanka, and is entitled to prefer this Application to Your Lordships' Court. The Frontline Socialist Party, a registered political party in Sri Lanka, nominated the Petitioner as a candidate at the presidential election held on 8th January 2015. The Petitioner was also a voter at the said election.

A true copy of the nomination paper pertaining to the candidacy of the Petitioner is annexed hereto marked 'P1' and pleaded as part and parcel hereof.

A true copy of the certificate of registration of the Frontline Socialist Party is annexed hereto marked 'P2' and pleaded as part and parcel hereof.

2. As more fully set out hereinafter, the Petitioner prefers this application to Your Lordships' Court in view of the violation of the fundamental rights of all citizens of Sri Lanka whose interests the Petitioner wishes to canvass before Your Lordships' Court.
3.
 - a) The 1st Respondent above named is the former President of the Democratic Socialist Republic of Sri Lanka whose term in office expired on 9th January 2015 owing to the result of the aforesaid presidential election held on 8th January 2015. He was also a candidate at the said election.
 - b) The 2nd Respondent above named is the Commander of the Sri Lanka Army, who was appointed by the 1st Respondent on or about 1st August 2013 under and in terms of Section 8 of the Army Act, No.17 of 1949. He held such post at all times material to this application.
 - c) The 3rd Respondent above named is the Commander of the Sri Lanka Navy, who was appointed by the 1st Respondent on or about 1st July 2014 under Section 8 of the Navy Act, No.34 of 1950. He held such post at all times material to this application.

- d) The 4th Respondent above named is the Commander of the Sri Lanka Air Force, who appointed by the 1st Respondent on or about 28th February 2014 under Section 8 of the Air Force Act, No.41 of 1949. He held such post at all times material to this application.
- e) The 5th Respondent above named is the Commissioner of Elections appointed by the 1st Respondent under and in terms of Article 103(1) of the Constitution, and who is vested with the authority under Article 104D of the Constitution to make recommendations to the President regarding the deployment of the armed forces of the Republic for the prevention or control of any actions or incidents which may be prejudicial to the holding or conducting of a free and fair election. He held such post at all times material to this application.
- f) The 6th Respondent is the Inspector General of Police. He is the head of the Sri Lanka Police Force (vide Clause 2 of Appendix I of the Ninth Schedule to the Constitution) and exercises powers and functions under the Police Ordinance, No.16 of 1865 for *inter alia* 'the effectual protection of person and property'. He held such post at all times material to this application.
- g) The 7th Respondent is the Honourable Attorney General of Sri Lanka who is made a party to this application in terms of the requirements of Article 134 of the Constitution and Rule 44(1)(b) of the Supreme Court Rules, 1990.

Background

4. The Petitioner states that the aforesaid presidential elections were announced in terms of the powers vested in the 1st Respondent by Article 31(3A) of the Constitution. The 1st Respondent accordingly issued a proclamation on 20th November 2014 appealing to the people for a mandate to hold office for a further term.

A true copy of the said proclamation contained in Gazette Extraordinary No. 1889/31 dated 20th November 2014 is annexed hereto marked 'P3' and pleaded as part and parcel hereof.

5. The 5th Respondent thereafter called for nominations to be submitted by 8th December 2014 and announced that the poll for the presidential elections would be held on 8th January 2015. The said poll was accordingly held on 8th January 2015 and, upon completion of the counting of valid votes for each candidate, the final result of the poll was released on 9th January 2015.
6. The Petitioner states that he is reliably informed that Sri Lanka Army personnel were deployed between 3rd and 8th January 2015 and during the early hours of 9th January 2015. Numerous media reports and reports from independent election monitors confirm the deployment of Sri Lanka Army personnel on the aforesaid dates.

True copies of media reports including an interview with the Former Commander of the Sri Lanka Army, General Sarath Fonseka are annexed hereto compendiously marked 'P4' and pleaded as part and parcel hereof.

True copies of periodic reports by the Centre for Monitoring Election Violence alleging the deployment of Sri Lanka Army personnel are annexed hereto compendiously marked 'P5' and pleaded as part and parcel hereof.

7. The Petitioner is reliably informed and verily believes that the 5th Respondent did not make any recommendation to the 1st Respondent under Article 104D of the Constitution regarding the deployment of the armed forces for the prevention or control of any actions or incidents which may be prejudicial to the holding or conduct of a free and fair election.
8. The Petitioner states that he became aware, on or about 3rd January 2015, that Sri Lanka Army personnel were deployed on the aforesaid dates in terms of an Order dated 2nd January 2015 issued by the 1st Respondent under Section

12(1) of the Public Security Ordinance (PSO), No. 25 of 1947. Section 12(1) of the PSO provides:

Where circumstances endangering the public security in any area have arisen or are imminent and the President is of the opinion that the police are inadequate to deal with such situation in that area, he may, by Order published in the Gazette, call out all or any of the members of all or any of the armed forces for the maintenance of public order in that area.

A true copy of the said Order contained in Gazette Extraordinary No.1895/24 dated 2nd January 2015 is annexed hereto marked 'P6' and pleaded as part and parcel hereof.

9. The Petitioner respectfully draws your Lordships' attention to the fact that the Order dated 2nd January 2015 purports to deploy *inter alia* the Sri Lanka Army in **all twenty-five (25) districts** of Sri Lanka.
10. The Petitioner respectfully states that the 1st Respondent (who was President at the time) was authorised to issue an Order under Section 12(1) of the PSO only upon meeting the following criteria stipulated in the PSO:
 - a. Circumstances endangering the public security have arisen in an area or are imminent; and
 - b. The President is of the opinion that the police are inadequate to deal with such a situation in that area.
11. The Petitioner states that it is most evident that the criteria listed above were not met on 2nd January 2015 or thereafter. First, no circumstances endangering the public security arose in any particular area, and certainly not simultaneously in all twenty-five (25) districts of Sri Lanka. Second, even in the event that such circumstances had arisen in all twenty-five (25) districts of Sri Lanka, the 1st Respondent could not have reasonably held the opinion that the police were inadequate to deal with any such circumstance.

12. The Petitioner reiterates that the 5th Respondent at no point whatsoever recommended to the 1st Respondent the deployment of the armed forces for the maintenance of public order.
13. The Petitioner further states that prior to the said Order dated 2nd January 2015, the 1st Respondent was in the habit of issuing similar Orders under Section 12(1) of the PSO on a monthly basis. The Petitioner wishes to draw Your Lordships' attention, that in such circumstances, the Bar Association of Sri Lanka issued a statement dated 7th July 2014 describing the said Orders as 'illegal, unjustified and *ultra vires*'.

A copy of the text of the said statement dated 7th July 2014 is annexed hereto marked 'P7' and pleaded as part and parcel hereof.

Violations

14. The Petitioner respectfully states that the exercise of powers vested under Section 12(1) of the PSO in circumstances other than those specifically referred to in the said section is *ultra vires* and amounts to the arbitrary exercise and/or abuse and/or misuse of the powers vested in the President under the PSO.
15. The Petitioner further states that the 1st Respondent, by exercising the aforesaid powers under Section 12(1) of the PSO in circumstances that clearly failed to meet the criteria stipulated in the said section, acted in a manner *ultra vires* the PSO and arbitrarily exercised and/or abused and/or misused the powers vested in him under the PSO.
16. The Petitioner is advised and further states that the aforesaid powers under Section 12(1) of the PSO are intended to be exercised strictly, genuinely and properly on the basis of the statutorily stipulated criteria, and that its arbitrary exercise by the 1st Respondent which is impugned by this application, constitutes misuse and/or abuse of powers.

17. The Petitioner further states that such misuse and/or abuse of the aforesaid powers under Section 12(1) of the PSO particularly at the time of an election, the outcome of which the 1st Respondent (as a candidate) was directly and very personally concerned in, creates very serious apprehensions of abuse of military power to affect and/or suppress and/or alter the outcome of the election. The Petitioner states that the creation of such apprehension by such misuse and/or abuse of powers by the 1st Respondent, is inimical to the conduct (and perception by citizens) of a truly free and fair election, the assurance of which is essential to secure, protect and advance meaningful enjoyment of the rights of franchise and all appurtenant rights, as provided and contemplated by Article 4(e) read with Article 4(d) and Article 12(1) of the Constitution.
18. In the given circumstances, the culpable action and/or inaction of the 1st Respondent in arbitrarily exercising and/or abusing and/or misusing powers vested in him under Section 12(1) of the PSO has resulted in the denial of the rights of all citizens of Sri Lanka to equality before the law. Thus and otherwise the said Respondent has violated and jeopardised the fundamental rights guaranteed to all citizens of Sri Lanka under **Article 12(1)** of the Constitution.
19. The Petitioner makes this application on the limited material available by reason of the time constraints imposed by the urgency of seeking the relief prayed for as provided by law. Hence the Petitioner respectfully reserves the right to furnish such further material and/or add such other parties and/or effect such amendments to the Petition as subsequent revelations, disclosures and/or developments may necessitate.
20. The Petitioner states that the actions of the 1st Respondent complained of herein constitute administrative and executive action and therefore entitle the Petitioner above-named to invoke the jurisdiction of Your Lordships' Court under Article 17 read with Articles 126 of the Constitution.
21. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.

22. An affidavit of the Petitioner is appended hereto in support of the averments contained herein.

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

- a) Grant Leave to Proceed with this Application in the first instance;

- b) Declare that the action(s) complained of herein constitute infringement by the 1st Respondent Percy Mahendra Rajapaksa of the fundamental rights of the citizens of Sri Lanka (including the Petitioner) guaranteed under and in terms of **Article 12(1)** of the Constitution;

- c) Grant compensation in a suitable sum determined by Your Lordships' Court;

- d) Grant Costs; and

- e) Grant such further and other relief(s) as to Your Lordships' Court shall seem meet.

Registered Attorney-at-Law for the Petitioner