

IN THE SUPREME COURT OF
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application under Article **125, 140** read with Article **104H(1)** of the Constitution of Republic of Sri Lanka for **Mandates** in the nature of Writ of ***Certiorari*** and ***Mandamus***

Nagananda Kodituwakku
99, Subadrarama Road
Nugegoda

Petitioner

Vs

SC/WRITS/05/2015

1. Commissioner of Elections
Elections Secretariat,
P.O. Box 02, Sarana Mawatha,
Rajagiriya

2. General Secretary – UPFA
307, T B Jayah Mawatha
Colombo 10

3. General Secretary
United National Party
400, Sirikotha
Pitakotte, Kotte

4. General Secretary
People's Liberation Front
464/20, Pannipitiya Road,
Pelawatta,
Battaramulla

5. General Secretary,
Ilankai Tamil Arasu Kadchi
30, Martin Road
Jaffna

6. U J Tilanga Sumathipala
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte

7. B Mahinda Samarasinghe

Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte

8. S B Dissanayake
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte

9. Lakshman Yapa Abeywardena
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte

10. Angajan Ramanathan
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte

11. A M H M Lebbe
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte

12. G Vijith Wijayamuni Zoysa
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte

13. M H M Navavi
Member of Parliament (UNP)
Parliament Approach Road
Sri Jayawardenepura Kotte

14. Sunil Handunnethi
Member of Parliament (JVP)
Parliament Approach Road
Sri Jayawardenepura Kotte

15. B N R Weerakoon
Member of Parliament (JVP)
Parliament Approach Road
Sri Jayawardenepura Kotte

16. Attorney General
Attorney General's Department
Colombo 11

Respondents

To: **THE HONOURABLE CHIEF JUSTICE AND THE OTHER JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

On this **11th May 2016**

Whereas further to the objections taken by the Petitioner, the Hon' Justice Buwaneka Aluwihare, Hon' Justice Priyantha Jayawardena and Hon' Justice Sarath de Arbrew (now retired) have withdrawn from taking part in the cases presented by the Petitioner, which have been clearly recorded in the journal entries, yet has not been duly noted by the Registrar when constituting Benches for the cases filed by the Petitioner

And whereas the Petitioner, a Public Interest Litigation Activist, initiated this case on **13th Oct 2015**, invoking the Writ Jurisdiction of the Court in terms of Article **104H** of the Constitution, which requires the Court to hear and finally dispose of this Writ Application within a period of two months of filing of the same **[104H (2)]**

And whereas the Court has so far failed to adhere to its Court's Constitutional obligation, allowing the defeated candidates at the 2015 General Election appointed as MPs through the National List to occupy the office unhindered

And whereas the Writ Application filed by the Petitioner is supported with overwhelming evidence of abuse of the people's Legislative, Executive, and Judicial powers by all three Branches of the Government in 1988 (Executive President, Parliament and five judges in the Supreme Court) - who had blatantly abused People's Judicial power to cover up the fraud giving legitimacy to the clause (inserted in brackets) "... *being persons whose names are included in the list submitted to the Commissioner of Elections under this Article or in any nomination paper submitted in respect of any electoral district by such party or group at that election...*" (Hereinafter referred to as the 'flawed clause') added to the **Article 99A** of the Constitution by deceitful means, without a mandate being obtained from the people at a Referendum and also without a certificate being endorsed by the Executive President on the Bill (**Article 83**) thereby clearly violating the People's sovereign right of franchise enshrined in **Article 3** of the Constitution

And whereas the process followed by the Executive in 1988 to make the said clause into law, had bypassed the mandatory procedure set out in the Chapter 12 of the Constitution and the said clause had been introduced by fraudulent means by the then Executive President J R Jayewardene to the approved 14th Amendment (ref: **P18**), referred to the Supreme Court [(not a duly Gazetted Bill placed on the Order Paper of the Parliament but a

typed-written document only (Ref: P36)] for the determination of its constitutionality (Ref: P38) and the Court had made an absolutely flawed determination that the said clause did not violate the People's Sovereign Right of franchise (Article 3) with no reasons whatsoever given to justify its determination and hence *ab initio void* in law (ref: P39), and made apparently under moral duress after the judges had been intimidated by the Executive President J R Jayewardene, which was reported by the International Commission of Jurist in April 1984, well in advance of the said flawed determination was made by the Court, which states that "he (President J R Jayewardene) found that *the Supreme Court a hindrance to some of his policies ... and that ... he was deliberately seeking to teach the Judges a lesson in order to make them more pliable to the Executive's wishes*" (Ref P31)

And whereas for the said reasons the said 'flawed clause' inserted in the Article 99A of the Constitution is *ab initio void* and has no force in law and shall not be deemed interpreted or construed as an Amendment to the Constitution [Article 82 (6)], in the absence of the due process being followed, which is mandatory in terms of Chapter XII of the Constitution

And whereas for the said reasons this matter which clearly affects the People's Sovereignty is of paramount National Importance and hence a request was made by the Petitioner by the Motion filed in Court on 13th Oct 2015, in terms of Article 132 (3) (iii) of the Constitution, for the hearing of the Writ Application before a fuller Bench of the Supreme Court, the Hon' Chief Justice on 24th Oct 2015 ruled as follows with no reasons given

"I am of the view that the matters involved in this case are not of general and public importance. Hence the request made in terms of Article 132 (3) (iii) of the Constitution is refused"

And whereas, the said ruling given by the Hon' Chief Justice with no reasons is purely arbitrary, unfair, unreasonable and hence amounts to abuse of the Peoples' Judicial Power (exercised by the Hon' Chief Justice purely on trust) apparently to confer a benefit on the Executive

And whereas further to the said abuse of office by Hon' Chief Justice, a serious allegation of corruption has been levelled against the Hon' Chief Justice in the matter (SC/Writs/03/2016) filed in the Supreme Court by the Petitioner

And whereas under the circumstances the Hon' Chief Justice has withdrawn from hearing of this Writ Application on 02nd April 2016 with the following journal entry made on the Case Record

“Since the Petitioner has filed SC/Writs/03/2016 on 29th March 2016, citing me as one of the Respondents, I do not wish to hear this matter. Please have the matter listed before a Bench of which I am not a member”.

Wherefore, under the circumstances the Application of the Article 132 (3) (iii) of the Constitution has become unworkable, the Petitioner with due respect and regard requests the Court to postpone this matter until the government of Sri Lanka complies with the undertaking given to the United Nations, in the co-sponsored Resolution (A/HRC/RES/30/1) dated 01st October 2015, to establish a justice system (amongst other proposals) with an accountability which is essential to uphold the Rule of Law (Ref: **paragraph 6** of the Resolution) which was reemphasised by the UN Special Rapporteur on the Independence of Judges and Lawyers, Monica Pinto on 07th May 2016, during her visit to Sri Lanka, enabling the Petitioner to make an appropriate application to the Court in terms of Article 132 (3) (iii) to support this Writ Application

*A copy of the said UN Resolution (A/HRC/RES/30/1) marked **P46** and the statement made by the UN Special Rapporteur on the Independence of Judges and Lawyers marked **P47** are attached hereto and the Petitioner pleads that the same to be deemed as part and parcel of the Petition.*

N. Kodituwakku


Attorney-at-Law & Commissioner for Oaths
99, Subadrarama Rd, Nugegoda.

N Kodituwakku, The Petitioner in Person
[Public Interest Litigation Activist]