

**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 **31<sup>th</sup> July 2017**

Whereas the Petitioner, filed this Writ Application against the Commissioner of Elections on **13<sup>th</sup> Oct 2015**, discharging his Constitutional duty to respect the rights of the other citizenry [**Article 28 (e)**], to challenge the appointment of rejected candidates at the General Election held in August 2015 as MPs, who are not legally qualified to be appointed through the National List

2. And whereas this Writ Application was initiated invoking the jurisdiction of the Supreme Court in terms of **Article 104H** of the Constitution, which requires that such applications, concerning the citizens sovereign right to franchise shall hear and finally dispose of within two months of filing of the same [**104H (2)**]

3. And whereas in the Application made to the Court overwhelming evidence was presented on the abuse of Presidential immunity to usurp the people's sovereign right to franchise in 1988, completely circumventing the due process established by the Constitution, which provides that the franchise conferred in the people cannot be usurped except people themselves surrender it by way of a mandate given at a Referendum

4. And whereas the Constitution provides any such Bill enacted without adhering to the due process shall not be construed as an amendment to the Constitution [Article 82(6)]

5. And whereas the evidence presented to the Court reveals that on the initiative of the then President J R Jayewardene, a foreign clause had been inserted to the Article 99A of the Constitution with no mandate obtained from the people, usurping people's right to franchise by fraudulent means, allowing political Party Secretaries to appoint defeated candidates as MPs, completely deceiving the Parliament and the Prime Minister who had presented a different Bill in the House, which contained no such clause in the Article 99A in the Bill so approved by the Parliament

6. And whereas the evidence presented to Court also reveals that there had been two Bills circulated in the Parliament to amend the Constitution (14<sup>th</sup> Amendment) and the Speaker had certified a different Bill with a foreign clause not approved by the Parliamentary Select Committee and the Parliament, permitting defeated candidates to enter the Parliament, and this flawed clause remains a part of the Article 99A of the Constitution

7. And whereas after the General Election - 2015 the appointment of 10 defeated candidates by respective Party Secretaries was challenged before the Supreme Court (SC/Writs/05/2015) with a special request made to the Chief Justice under the Constitution [(Article 132 (3) (iii)], to appoint a fuller bench to hear this case, considering the National importance attached to it

8. And whereas the then Chief Justice, K Sripavan in Oct 2015 and thereafter the incumbent Chief Justice Priyasath Dep in June 2017, declined to consider this matter as a case of National Importance and rejected the application made seeking appointment of a fuller bench to hear this case

9. And whereas since filing this case, two years have lapsed without the matter even being supported before the Court

10. And whereas the denial of a full bench hearing by the Chief Justice, with no reasons whatsoever given, has defeated the purpose of the initiation of this case in the public interest

11. And whereas in an appeal (SC/Appeal 99/2017) on a private matter initiated by Geetha Kumarasinghe, MP, with a request to the Chief Justice for fuller bench was favourably considered by Your Lordship on 14<sup>th</sup> June 2017 with five judges appointed to hear the case

12. And whereas in the said circumstances an application was made to the Bar Association of Sri Lanka, supported by 134 lawyers, to convene a **Special General Meeting** to address the serious situation faced by the citizenry as Judiciary seems to be incapable of giving effect to its constitutional obligations, restoring people's trust and confidence in the Judiciary (ref: **X48**).

13. And whereas the Executive Committee of the Bar Association is yet to make a final decision on the said request

14. And whereas, I reliably understand that I have been targeted to face professional restrictions solely due to conscientiously and persistently pursuing matters concerning the protection of people's sovereign rights in keeping with Constitutional Obligations of my chosen occupation as an Attorney-at-Law as set out in Article 28 of the Constitution

15. And whereas, all Lawyers, performing public interest litigation are protected by Latimer House Principles and UN Basic Principles on the Role of Lawyers and both these instruments require the member states to protect the interest of lawyers to perform their duty free from intimidation, hindrance, harassment or improper interference with a right to take part in public discussion of matters concerning law, the administration of justice and the promotion and protection of human rights without suffering professional restrictions and obstruction from functioning independently by reason of their lawful actions.

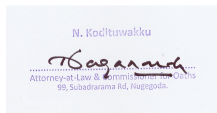
16. And whereas my life in Sri Lanka is not safe due to the sustained pattern of intimidation and threats directed at me, which I have already reported to the Inspector General of the Department of Police (IGP).

*(A true copy of the written complaint made to the IGP dated 02<sup>nd</sup> July 2017 and the covering letter with even dated marked X49 and X50 is attached hereto)*

17. And whereas there is a kind of a fear psychosis spread across the society, making people refrain from coming forward and challenging these serious abuses of power by those who hold public offices in the Legislature and the Executive.

18. Under the given circumstances, I have decided not to proceed with the matter and with due respect request the Court to **make an Order to abate the proceedings**.

19. Copies of this Motion have been duly served on the **Attorney General** and the **3<sup>rd</sup> Respondent** by recorded delivery and the proof of delivery is enclosed herewith.



**N Kodituwakku, The Petitioner in Person**

[Attorney-at-Law (Sri Lanka) Solicitor (UK) and Public Interests Litigation Activist]