

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

Case No. **SC/WRIT/08/2019**

*In the matter of an application for Writs of  
Certiorari and/or Prohibition under and in  
terms of Article 104H(1) of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

**EMERGING MEDIA (PVT.) LTD.,**  
25<sup>th</sup> Floor, East Tower, World Trade  
Center, Echelon Square, Colombo 1.

**Petitioner**

*v.*

**1. MAHINDA DESHAPRIYA**

Chairman,  
Elections Commission of Sri Lanka  
Elections Secretariat,  
Sarana Mawatha,  
Rajagiriya, 10107

**2. N J ABEYSEKARA,**

Member  
Elections Commission of Sri Lanka  
Elections Secretariat,  
Sarana Mawatha,  
Rajagiriya, 10107

**3. PROF. RATNAJEEVAN HOOLE**

Member  
Elections Commission of Sri Lanka  
Elections Secretariat,  
Sarana Mawatha,  
Rajagiriya,1010

4. SAMAN SRI RATHNAYAKE

Director General  
Elections Commission of Sri Lanka  
Elections Secretariat,  
SaranaMawatha,  
Rajagiriya,10107

Respondents

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

On this 17<sup>th</sup> day of October 2019.

The Petition of the Petitioner appearing through Ms. Niluka Dissanayake, its Registered Attorney at Law states as follows:

1. The Petitioner states that

- a. the Petitioner is a limited liability company incorporated under the laws of Sri Lanka having its registered office and/or principle place of business at the captioned address and accordingly the Petitioner has the requisite capacity to sue and to be sued in its corporate name.

*A true copy of the Certificate of Incorporation of the Petitioner is annexed herewith marked as "A1(a)" and pleaded part and parcel hereof.*

- b. the principle shareholders of the Petitioner are all Citizens of Sri Lanka and the Petitioner is in fact fully owned by Sri Lankans.

*A true copy of the last Annual Returns filed by the Petitioner is annexed herewith marked as "A1(b)" and pleaded part and parcel hereof.*

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- c. the Petitioner company is *inter alia* engaged in business of advertising by creating digital advertising spaces in outdoor areas, in shopping centers, hospitals, saloons, pharmacies, buses etc.

*A copy of the general advertising/marketing brochure of the Petitioner is annexed herewith marked as "A1(c)" and pleaded part and parcel hereof.*

- d. the Petitioner has been a pioneering business and has revolutionized the outdoor and indoor advertising landscape since its inception in 2009 by introducing digital advertising to various spaces hitherto unknown in the advertising industry in Sri Lanka.

2. The Petitioner states that

- a. as at the financial year ended 31<sup>st</sup> March 2019, the Petitioner had a turnover of over Rupees One Hundred and Twenty Million (Rs. 120,000,000.00) and paid approximately Rupees. Four Million (Rs. 4,000,000.00) as income tax to the Inland Revenue Department and further has paid nearly Rupees Twelve Million (Rs. 12,000,000.00) by way of various taxes to the Colombo Municipal Council and other Municipal Councils in the areas in which the Petitioner operates the aforesaid indoor and outdoor advertising screens,
- b. currently the Petitioner provides employment to over 30 employees,
- c. the Petitioner makes a significant contribution to the economy by providing employment and paying taxes to the Government and the Local Authorities.

3. The Petitioner states that,

- a. the **1<sup>st</sup> Respondent** is the Chairman of the Elections Commission of the Democratic Socialist Republic of Sri Lanka and the **2<sup>nd</sup> and 3<sup>rd</sup> Respondents** are members of the said Elections Commission established under Article 103 of the Constitution pursuant to the 19<sup>th</sup> Amendment to the Constitution.
- b. the 4<sup>th</sup> Respondent is the Director General of the aforesaid Elections Commission

4. The Petitioner states that the Petitioner has installed 9 Large Light Emitting Diode (LED) Screens in various prominent locations in and around the city of Colombo

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and the main suburbs, and has several other smaller screens at Supermarkets, Saloons, shops, gyms, hospitals and pharmacies, and on board the luxury bus services operated between Jaffna and Colombo and Colombo and Galle/Matara.

5. The Petitioner states that the various advertising opportunities offered by the Petitioner to its customers provide unique opportunities to the customers of the Petitioner to customize their advertisements dependent on the target audiences in each of the aforesaid categories.
6. The Petitioner states that the Petitioner is aware that an election has been called by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents as the Elections Commission of the Republic for the purposes of electing the President of the Republic in terms of the provisions of the Presidential Elections Act No. 2 of 1981 and the 1<sup>st</sup> to 3<sup>rd</sup> Respondents by Order made in terms of Section 2 of the said Act published in the Gazette Extraordinary fixed 7<sup>th</sup> October 2019 as the date of nomination of candidates for the Election of the President and fixed 16<sup>th</sup> November 2019 as the date on which the poll for such election shall be taken.

*A true copy of the Order made in terms of Section 2 of the Presidential Elections Act No. 2 of 1981 published in the Gazette Extraordinary No. 2141/25 dated 18<sup>th</sup> September 2019 is annexed herewith marked as "A2" and pleaded part and parcel hereof.*

7. The Petitioner states that, the aforesaid Presidential Elections Act *inter alia* provides that,
  - a. no person shall, on any date on which a poll is taken at a polling station, do any of the following acts within the precincts, or a distance of a half a kilometer of the entrance, of that polling station: (i) canvas for votes; (ii) solicit the vote of any elector; (iii) persuade any elector not to vote for any particular candidate; (iv) persuade any elector not to vote at the election (v) distribute or exhibit any handbill placard, poster, photograph or drawing or notice relating to the election (other than any official handbill, placard, poster, photograph or drawing or notice) or any symbol allotted under section 20 to any candidate. (**Section 68(1)**)

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- b. no person shall on any date on which the poll is taken at a polling station (i) use or operate, within or at the entrance of a polling station or in any public or private place in the neighborhood thereof, any megaphone or loudspeaker or other apparatus for magnifying or reproducing the human voice, or (ii) shout or otherwise act in a disorderly manner within or at the entrance of a polling station or in any public or private place in the neighborhood thereof, so as to cause annoyance to any person visiting the polling station for the poll or so as to interfere with the work of the officers and other persons on duty at the polling station. (**Section 68(2)**)
- c. no person shall, (i) at any time during the period commencing on the day of nomination and ending one week after the date on which the result of the poll taken at such election is declared by the Commissioner under this Act, conduct, hold or take part in any procession, other than a procession on May 1 in the year, or any procession for religious or social purposes or (ii) at any procession held or conducted during the period of such election, do any act or thing calculated to promote the election. (**Section 69**)
- d. No public meeting shall be held during the period commencing forty-eight hours before the date fixed for the poll and ending one week after the result of the poll has been declared. (**Section 70**)
8. The Petitioner further states that **Section 73** of the aforesaid Presidential Elections Act *inter alia*
- a. Prohibits the printing, publishing and distribution or posting any advertisement, Handbill, placard or poster which refers to an election and which does not bear upon its face the names and addresses of its printer and publisher,
  - b. Prohibits the candidate at an election or his agent from having more than one notified central election office in each electoral district and one branch election office in each polling district.
9. The Petitioner specifically states that **Section 74** of the aforesaid Presidential Elections Act specifically provides *inter alia* for the display of handbills and posters

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etc., and enacts that, During the period commencing from the day of nomination at an election and ending on the day following the day on which a poll is taken at such election, no person shall, for the purpose of promoting the election display

- a. in any premises, whether public or private, any flag or banner except in or on any vehicle that is used for the conveyance of a candidate at such election; or
- b. any handbill, placard, poster, notice, photograph of a candidate, symbol, sign or drawing on any place to which the public have a right of, or are granted, access except in or on any premises on any day on which an election meeting is due to be held in such premises; or
- c. any handbill, placard, poster, notice, photograph of a candidate, symbol, sign, drawing, flag or banner, on or across any public road ; or
- d. any handbill, placard, poster, notice, photograph of a candidate, symbol, sign, or drawing in or any vehicle, except in or on any vehicle that is used for the conveyance of a candidate at such election

10. The Petitioner states that the **Section 82** of the Presidential Elections Act *inter alia* makes certain payments as set out in subsections 1, 2 and 3 thereof as illegal practices. However, notwithstanding the provisions of Subsections 1, 2 and 3 of Section 82, **where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of Section 82.**

11. The Petitioner states that,

- a. the Petitioner is a juristic person comprising of the several shareholders who are electors at the Presidential Elections and are not persons who are disqualified from being electors at the Presidential Elections.
- b. it is the ordinary business of the Petitioner to carry out advertising activities of its clientele.

12. The Petitioner states that to the best of knowledge of the Petitioner placing of electronic advertisements on payment of money through for radio advertisements,

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television advertisements, Mobile SMS advertisements, social media based advertisements, and other online advertisements has not been prohibited by the aforesaid Presidential Elections Act and in fact, at all recently held elections including the previous Presidential Election 2015, Parliamentary Elections 2015, and the Local Government Elections in 2018 had significant electronic advertising campaigns by various candidates.

13. The Petitioner states that on or about 12<sup>th</sup> September 2019, soon prior to the calling for the Presidential elections by the Order marked "A2", the 1<sup>st</sup> to 3<sup>rd</sup> Respondents promulgated "Media Guidelines" to be adhered to by Media Institutions and Government entities during elections, under and in terms of Article 104B(5)(a) of the Constitution of the Republic.

*A true copy of the said Media Guidelines under Article 104B(5)(a) of the Constitution dated 12<sup>th</sup> September 2019 published in Gazette Extraordinary No. 2140/53 is annexed herewith marked as "A3" and pleaded part and parcel hereof.*

14. The Petitioner specifically states that the aforesaid Presidential Elections Act No. 2 of 1981 nor the aforesaid Media Guidelines marked A3 prohibits the display and/or publishing of advertisements of candidates for a fee by advertising agencies and/or media companies during the Presidential election period.

15. The Petitioner states that on or about 1<sup>st</sup> October 2019, a newspaper article appeared on the Sunday Times website indicating *inter alia* that "The Election Commission (EC) has prohibited the promotion of Presidential candidates on digital LED screens on roads, and in cinema halls. Issuing a statement the polls body said that promoting a candidate in that manner is a punishable offence. "Entering into contracts to conduct such promotions is punishable under the elections law," the EC said."

*A true copy of the said news article published on the Sunday Times online site dated 1<sup>st</sup> October 2019 is annexed herewith marked as "A4" and pleaded part and parcel hereof.*

16. The Petitioner states that thereafter, a purported press statement dated October 2019 under the hand of the 4<sup>th</sup> Respondent was circulated on social media and social messaging platforms indicating *inter alia* that "මැතිවරණ නීතිය යටතේ ඩිජිටල් තාමසුවරු

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සහ සිනමා ශාලා තුළ මෙම ප්‍රචාරණය සපුරා තහනම් බැවින් එම ප්‍රචාරණය සඳහා කොන්ත්‍රාත්තුවලට එළඹීම සහ ප්‍රචාරණය කිරීම මැතිවරණ නීතිය අනුව දඬුවම් ලැබිය හැකි බව මැතිවරණ කොමිෂන් සභාව අවධාරණය කරයි. ඒ අනුව එවැනි ප්‍රචාරක කටයුතුවල නියැලෙන පුද්ගලයන්ට එරෙහිව මැතිවරණ නීතිය යටතේ පියවර ගැනීමට කටයුතු කරන බව මැතිවරණ කොමිෂන් සභාව අවධාරණය කරයි.”

*A true copy of the aforesaid press statement dated October 2019 published by the 4<sup>th</sup> Respondent is annexed herewith marked as “A5” and pleaded part and parcel hereof.*

17. The Petitioner states that in the circumstances the Petitioner through their Attorney at Law wrote to the 1<sup>st</sup> Respondent and sought and immediate clarification on the matter as to under which provision of the election law such restriction has been only in relation to placing of election related advertisements on Digital LED Screens and at Cinema Halls.

*A true copy of the said letter dated 15<sup>th</sup> October 2019 addressed to the 1<sup>st</sup> Respondent and the Registered Post article thereof are annexed herewith marked as “A6(a)” and “A6(b)” respectively and are pleaded part and parcel hereof.*

18. The Petitioner states that the Petitioner has not received a response to the said request at the time of filing of this application.

19. The Petitioner states that

- a. there is no express statutory prohibition placed on digital advertising including accepting advertisements for a fee for display on Digital LED Screens or at Cinema Halls inasmuch as there is no statutory prohibition in relation to electronic advertising over radio and/or television and/or telephone and/or Short Message Services (SMS) and/or other communications platforms and/or over social media and/or *via* the internet;
- b. the prohibitions placed in the Presidential Elections Act No. 2 of 1981 does not extend such advertising over electronic modes of advertising including Digital LED Screens and Cinema Halls.



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20. The Petitioner states that therefore, in fact, the assertion of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents that entering into contracts for advertising over Digital LED Screens and Cinema Halls is a punishable offense under the elections law is false and false to the knowledge of the 1<sup>st</sup> to 4<sup>th</sup> Respondents.
21. The Petitioner states that in any event, attempting to prohibit election related advertisements on Digital LED screens and at Cinema Halls only, whilst electronic advertising over radio and/or television and/or telephone and/or Short Message Services (SMS) and/or other communications platforms and/or over social media and/or *via* the internet is absurd and unreasonable and is unequal treatment being meted out to only a particular segment of advertisers including the Petitioner during the elections.
22. The Petitioner states that the advertising packages of the Petitioner are cost effective in reaching the general public and relatively low cost compared to television advertising and therefore even the candidates having a lower election budget could make effective use out of the Petitioner's services in carrying out their campaign activities.
23. The Petitioner states that as a tax paying lawful business entity of Sri Lanka the Petitioner has a legitimate expectation that the Petitioner would be entitled to engage in lawful business activities without hindrance, and the purported prohibition sought to be enforced by the 1<sup>st</sup> to 4<sup>th</sup> Respondents in the absence of specific statutory provisions to such effect is arbitrary, capricious and derogation of the Fundamental Rights of the Petitioner protected and guaranteed under and in terms of Article 12(1) and 14(1)(g) of the Constitution of the Republic.
24. The Petitioner states that the said purported decision of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to prohibit taking election related advertisements for display/publication on Digital LED Screens and at Cinema Halls is arbitrary, grossly unreasonable, absurd, contrary to the rules of Natural Justice and is violative of the right to equal protection of the law as guaranteed by Article 12(1) of the Constitution and the right to lawful trade, business or enterprise as guaranteed by Article 14(1)(g) of the Constitution of the Republic.

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25. In the circumstances, in the absence of any statutory or other regulatory sanction to impose any prohibition and/or punishment to violation thereof,
- a. the 1<sup>st</sup> to 3<sup>rd</sup> Respondents' communication to the public that election related advertising on Digital LED Screens and Cinema Halls is illegal, unlawful and wrongful;
  - b. the imposition of any such prohibition and restriction and/or any decision thereof by the 1<sup>st</sup> to 3<sup>rd</sup> Respondent to impose such restriction is null and void *ab initio*.
26. In the circumstances, the Petitioner states that cause has arisen to the Petitioners to seek the following relief:
- a. a **Writ of Certiorari** quashing the purported decision of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to notify the public that it is an election offense to advertise election advertising on Digital LED Screens and Cinema Halls as communicated to the public by document marked "A5".
  - b. a **Writ of Prohibition** preventing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents from taking any action against the Petitioner and/or preventing the Petitioner from lawfully engaging in election advertising on Digital LED Screens and/or Cinema Halls based on the directives contained in the document produced marked "A5";
27. The Petitioner states that the Presidential Elections are scheduled to be held on 16<sup>th</sup> November 2019 and the Petitioner is being deprived of the opportunity to generate advertising revenue due to the aforesaid public notice by the 4<sup>th</sup> Respondent marked "A5" being considered by the various candidates as being the correct legal position in that regard. The Petitioner states that in the circumstances, unless the interim relief sought herein is not granted by Your Lordship's Court, grave and irremediable prejudice would be occasioned to the Petitioner.
28. The Petitioner states that the Petitioner has not previously invoked the jurisdiction of Your Lordship's Court in respect of the subject matter of this application.
29. An affidavit of R.P.S.L. Kumara a Director of the Petitioner is annexed herewith in support of the averments contained herein.

Wherefore, the Petitioner prays that Your Lordship's Court be pleased to,

- a. issue **Notice** on the Respondents
- b. a **Writ of Certiorari** quashing the purported decision of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to notify the public that it is an election offense to advertise election advertising on Digital LED Screens and Cinema Halls as communicated to the public by document marked "A5".
- c. a **Writ of Prohibition** preventing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents from taking any action against the Petitioner and/or preventing the Petitioner from lawfully engaging in election advertising on Digital LED Screens and Cinema Halls based on the directives contained in the document produced marked "A5";
- d. grant an issue an **Interim Order** preventing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents from taking any action against the Petitioner and/or preventing the Petitioner from lawfully engaging in election advertising on Digital LED Screens and Cinema Halls based on the directives contained in the document produced marked "A5" until the final determination of this matter.
- e. grant costs;
- f. grant such other and further relief Your Lordship's Court shall seem meet.

**Attorney-at-Law for the Petitioner**

**Settled by**

Iresh Seneviratne,  
Pulasthi Rupasinha  
Thishya Weragoda  
**Attorneys at Law**