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

Case No. SC FR/

In the matter of an Application under and in terms of Article 126 and Article 17 which read with Article 104A of the Constitution of the Democratic Republic of Sri Lanka.

Charitha Gunarathne,
Attorney-at-Law,
No. 118,
Barnes Place,
Colombo.

PETITIONER

Vs

1. **Election Commission,**
Elections Secretariat Office,
Sarana Mawatha,
Rajagiriya.
2. **Mahinda Deshapriya,**
Chairman of the Election Commission,
Elections Secretariat Office,
Sarana Mawatha,
Rajagiriya.
3. **N. J. Abeysekera,**
Member of the Election Commission,
Elections Secretariat Office,

Sarana Mawatha,
Rajagiriya.

4. **S. Rathnajeewan H. Hoole,**
Elections Secretariat Office,
Sarana Mawatha,
Rajagiriya.
5. **P. B. Jayasundare, PH. D.,**
Secretary to the President,
Galle Face,
Colombo 01.
6. **Dr. Anil Jasinghe,**
Director General of Health Services,
Ministry of Health,
Suwasiripaya, No. 385,
Rev. Baddegama Wimalwansa Thero
Mawatha,
Colombo 10.
7. **Hon. Attorney General,**
Attorney General's Department,
Colombo 12.

RESPONDENTS

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

On this 29th day of April, 2020.

The Petition of the Petitioner above-named appearing by his registered Attorney-at-Law, Iffat Shahabdeen states as follows: -

1. Petitioner is an Attorney-at-Law and ex-member of Municipal Council of Colombo who casts his vote from Election District of Galle *as per* the Electorate List published by the 1st Respondent in 2019.

Copy of the computer generated Voter Registration Details issued by the Election Commission of Sri Lanka and the True Copy of the NIC of the Petitioner, are annexed hereto marked P1, P2 and are pleaded as part and parcel hereof.

2. 1st Respondent is the Election Commission of Sri Lanka and 2nd to 4th Respondents are its members, all of which have been created by 19th Amendment to the Constitution for the object of conducting free and fair elections and Referenda in Sri Lanka.
3. 5th Respondent is the Secretary to the President.
4. 6th Respondent is the Director General of Health Services whose name has been inserted to the caption, as the 1st to 4th Respondents said to have taken their decisions to conduct the General Election 2020 consulting the opinion of the 6th Respondent who is also a member of the Presidential Task Force to Preventing of Covid-19.
5. The 7th Respondent is the Hon. Attorney General.
6. Petitioner respectfully seeks in this Application, *inter alia*, an Order quashing a decision taken by the 1st to 4th Respondents to conduct the General Election 2020 on 20th June of this year by publishing the Extraordinary Gazette Notification No. 2172/3 dated 20-04-2020, and other decisions, actions, orders which are being

taken, subsequent to the aforesaid Gazette, due to which the Fundamental Rights protected by the Constitution, enjoyed by the Petitioner, have been violated.

True copies of the Sinhalese and English versions of the Extraordinary Gazette Notification No. 2172/3 dated 20-04-2020, are annexed hereto marked P3(a), P3(b) and are pleaded as part and parcel hereof.

7. His Excellency the President dissolved the Parliament of Sri Lanka on 01-03-2020 and the notice of the intention of holding the General Election to select the members to the Parliament was declared by publishing the Extraordinary Gazette Notification No. 2165/08 dated 02-03-2020 in terms of the powers vested in by Article 70 of the Constitution to be read with Sub-paragraph (c) of Paragraph (2) of Article 33 of the Constitution and in pursuance of the Provisions of Section 10 of the Parliamentary Elections Act, No. 1 of 1981 (as amended).

True copies of the Sinhalese and English versions of the Extraordinary Gazette Notification No. 2165/08 dated 02-03-2020, are annexed hereto marked P4(a), P4(b) and are pleaded as part and parcel hereof.

8. The nomination papers for the Election were called by the 1st Respondent to hold the Election for those who contest in the Poll, on or before 19-03-2020 under the Parliamentary Election Act No. 01 of the 1981 (as amended).
9. Having received the nomination papers, by publishing the Extraordinary Gazette Notification No. 2167/12 dated 20-03-2020 the 2nd to 4th Respondents issued the Notice under section 24(1)(a) and 24(1)(c) of the Parliamentary Election Act No. 01 of the 1981 (as amended) according to which the Election date was set to fall on 25-04-2020.

True copies of the Sinhalese and English versions of the Extraordinary Gazette Notification No. 2167/12 dated 20-03-2020, are annexed hereto marked P5(a), P5(b) and are pleaded as part and parcel hereof.

10. Meanwhile, *inter alia*, following developments were taken place pertaining to a pandemic called Covid-19 in Sri Lanka:

- I. 1st Sri Lankan Covid-19 patient was found on 10-03-2020;
- II. 73-cases were found by 20-03-2020 infected by Covid-19;
- III. number of daily cases on 20-03-2020 was 13;
- IV. by 20-03-2020 the total Corona virus cases around globe was 275, 734 and the death toll was 11,440;
- V. the Government imposed the curfew in all-island on 20-03-2020;
- VI. on 24-03-2020 onwards, the Government declared Colombo, Gampaha, Kalutra, Jaffna, Puttalam as high risk areas and issued curfew *sine die* which operates as at the date of filling of this petition;
- VII. during this period of time, all the Government and Private Sector workers were asked to work at home which was operated over the duties of 1st to 4th Respondents, 7th Respondent and whomever work under them;
- VIII. by the present day, total number of Covid-19 infected persons are nearly 600 in Sri Lanka;

11. By apprising the said figures and/or intended possible cases that could report in upcoming days, 2nd to 4th Respondents by publishing the Extraordinary Gazette Notification No. 2167/19 dated 21-03-2020 annulled their previous Extraordinary Gazette Notification No. 2167/12 dated 20-03-2020 and declared that the Election cannot be taken on the 25th of April 2020 due to the Covid -19 outbreak prevailing in Sri Lanka.

12. Further, it was also notified that the Election Commission will appoint a day coming after fourteen days from the 30th day of April 2020 as the day for the

taking of the poll for the Election to select Members to the Parliament for 22-Electoral Districts, of which Districts the Petitioner is a registered voter, and that the said date will be notified by a Gazette Notification in due course.

True copies of the Sinhalese and English versions of the Extraordinary Gazette Notification No. 2167/19 dated 21-03-2020, are annexed hereto marked P6(a), P6(b) and are pleaded as part and parcel hereof.

13. In the hindsight, as the reported cases who were infected by Covid-19 kept increased, the Chairman of the Election Commission (2nd Respondent) by his letter dated 31-03-2020 addressed to the Secretary to the President (5th Respondent), requested to inform the President over a looming Constitutional crisis which could transpire due to, *inter alia*, if not the Election Commission commences their work by 20th of April 2020 they could not conduct the Election before 2nd of June 2020, as per the Constitution the new Parliament has to convene within 3-months from the date of dissolution of the Parliament which falls on or before 2nd of June 2020, there is no possibility of conducting the Election duties with the prevailing pandemic outbreak, hence it is not realistic that the Election can be held before the expiration of 3-months limit.

True copy of the letter dated 31-03-2020 sent by the Election Commission is annexed hereto marked P7 and is pleaded as part and parcel hereof.

14. In addition to the aforesaid letter, the Election Commission sent another letter dated 01-04-2020 addressing to the Secretary to the President (5th Respondent), requesting, *inter alia*, that, it is learnt from those who try to control the Covid-19 pandemic that there is no possibility of averting this disease during the month of April 2020, hence it is not possible that the Election can be held before 3-months limit - since the last date of the permitted time would fall on 02-06-2020, the Election Commission has observed that the new Parliament has to convene within 3-months from the date of dissolution of the Parliament and which is not

possible with the *status quo*, therefore, His Excellency the President may be directed to call for a determination from the Supreme Court on this matter.

True copy of the letter dated 01-04-2020 sent by the Election Commission is annexed hereto marked P8 and is pleaded as part and parcel hereof.

15. In response, the Secretary to the President wrote a letter dated 09-04-2020 addressing the Chairman of the Election Commission – the 2nd Respondent making following observations and requested, *inter alia*, as follows:

- I. If there is no likelihood of conducting the Election on 25-04-2020, the Election Commission has to decide afresh date which is not less than 14-days of the original date of the Poll, according to section 24(3) of the Parliamentary Election Act No. 01 of the 1981 (as amended);
- II. Time has not ripen to determine whether that the Election cannot be conducted before 25-04-2020;
- III. Deciding the date of the Poll is an exclusive duty of the Election Commission to which the President has no intention to interfere with;
- IV. Right to franchise and exercise that right, independently, are the rights enjoyed by the citizen;
- V. Hence, it is not warranted to invoke the Article 129 of the Constitution to call for a determination from the Supreme Court;

True copy of the letter dated 09-04-2020 sent by the Secretary to the President is annexed hereto marked P9 and is pleaded as part and parcel hereof.

16. Meantime, on 20-04-2020, in the website named, “Colombo Telegraph” (<https://www.colombotelegraph.com/index.php/no-to-new-gazette-letter-to>

[the-election-commission-prof-hoole/](#)) a letter dated 16-04-2020 was published which is said to be written by the 4th Respondent – Prof. S. Rathnajeewan H, Hoole from which the latter had objected to hold an election in Sri Lanka. The Petitioner verily believes that that is the stance of one of the members of the 1st Respondent Commission.

*A copy of the said website Article dated 20-04-2020 is annexed hereto marked **P10** and is pleaded as part and parcel hereof.*

17. Nevertheless, 2nd to 4th Respondents, by publishing the Extraordinary Gazette Notification No. 2172/03 dated 20-04-2020 issued a purported Order under section 24(3) of the Parliamentary Election Act No. 01 of the 1981 (as amended) according to which the Parliamentary Election date was again fixed to fall on 20-06-2020.

*[True copies of the Sinhalese and English versions of the Extraordinary Gazette Notification No. 2172/3 dated 20-04-2020 have already been annexed as **P3(a), P3(b)**].*

18. In the aforesaid premise, the Petitioner respectfully states that the purported order published by the 2nd to 4th Respondents in the Extraordinary Gazette Notification No. 2172/03 dated 20-04-2020 to conduct the Parliamentary Election on 25-06-2020 is, *inter alia*, illegal and unconstitutional, unreasonable, *ultra vires* and has violated the Fundamental Rights protected by the Constitution to the Petitioner, for the following among other reasons: -

I. The Petitioner pleads that the purported order published by the 2nd to 4th Respondents in the Extraordinary Gazette Notification No. 2172/03 dated 20-04-2020 is not constitutional due to following points of law:

a) inasmuch as the Article 70(5)(a), 70(5)(b) and 70(5)(c) of the Constitution has provided mandatory provision to convene the

new Parliament not later than 3-months from the date of Proclamation of the dissolution of Parliament, the election date could not surpass 02-06-2020;

- b) inasmuch as the section 10(1)(b)(i) of the Parliamentary Election Act No. 01 of the 1981 (as amended) has provided mandatory provisions for the fixing of date for the Poll within a period not less than 5-weeks and not more than 7-weeks from the closing date of the Nomination, the election date could not have exceeded beyond 13-05-2020;
- c) even if the section 24(3) of the Parliamentary Election Act No. 01 of the 1981 (as amended) is abided by, the 2nd to 4th Respondents could have proclaimed the new Election date [whilst complying to the rule of not less than 14-days, after the original date (25-04-2020) of Poll] which would fall from 11th of May to 13th of May; but, contrary, 2nd to 4th Respondents have willingly and knowingly violated very Act which they resort to conduct the Parliamentary Elections;
- d) although the aforesaid mandatory provisions had been duly adhered to by the successive previous Commissioners of Election and this very Election Commission in past, yet the latter has manifestly violated the clear, unambiguous and express provisions referred to above in declaring the order published in the Extraordinary Gazette Notification No. 2172/03 dated 20-04-2020;
- e) hence, the Petitioner pleads that his Fundamental Right of equal protection of law under Article 12(1) has blatantly been violated by the aforesaid actions of the 1st to 4th Respondents;

II. The Petitioner pleads that the purported order was compelled to be published in the Extraordinary Gazette Notification No. 2172/03 dated 20-04-2020 by the 2nd to 4th Respondents due to following actions and omissions of the 5th Respondent who represents His Excellency the President:

- a) as per Article 33(1)(d) of the Constitution, the President on the advice of the Election Commission, has to ensure the proper conditions for the conduct of a free and fair election and referendum. Since Sri Lanka is still being battered by Covid-19 pandemic, and also the President has failed to ensure the proper conditions for the conduct of an election (despite the fact that spread of the pandemic and the pandemic itself is an Act of God), the President and the 5th Respondent have violated the above Constitutional provisions;
- b) despite the fact that the concerns made by the 2nd to 4th Respondents in their 2-letters dated 31-04-2020 and 01-04-2020 and the individual letter dated 16-04-2020 sent by the 4th Respondent – Prof. S. Rathnajeewan H, Hoole, the 5th Respondent failed to advice and/or direct the President to take actions under Article 33(1)(d) of the Constitution;
- c) despite the fact that the concerns made by the 2nd to 4th Respondents in their 2-letters dated 31-04-2020 and 01-04-2020 and the individual letter dated 16-04-2020 sent by the 4th Respondent – Prof. S. Rathnajeewan H, Hoole, the failure of the 5th Respondent to advice and/or direct the President to call for a determination from the Supreme Court under Article 129 over imminent Constitutional deadlock, has infringed the Fundamental Rights enjoyed by the Petitioner;

- d) as long as the maintaining of the good health of the citizen, and creating proper condition to have a Poll is not a responsibility of 1st to 4th Respondents, and which is the sole responsibility of the President himself, any impossibility of conducting the Parliamentary Election within the due dates is a failure of the 5th and/or 6th Respondents and/or the President himself as per Article 33(1)(d) of the Constitution;
- e) whilst the 5th and/or 6th Respondents and/or the President himself having failed to comply to their constitutional obligations, the fact that 1st to 4th Respondents being pushed to the wall illustrates that the 5th and/or 6th Respondents and/or the President himself have violated the constitutional onus which was bestowed upon them;
- f) hence, the Petitioner pleads that the purported order was compelled to be published in the Extraordinary Gazette Notification No. 2172/03 dated 20-04-2020 by the 2nd to 4th Respondents due to the actions and omissions of the 5th Respondent and/or President himself;

III. Petitioner pleads that furtherance to the aforesaid points of law, Election Commission should not be permitted to hold an Election in this grim period of time due to following reasons:

- a) as at the filling of this application there are about 600-confirmed corona virus cases in the country;
- b) death toll has risen up to 7-persons;

- c) each district has recorded to have found infected persons including the electorate from which the Petitioner represents from;
- d) according to the 1st Respondent nearly 700-Million Rupees are to be estimated to spend for the Election and that amount will double should we take extra precautions, such as the practices followed by South Korea, to take steps to prevent the infection rate during the election time;
- e) even the Covid-19 Fund has scarcely went over 700-Million Rupees which is less than the colossal expenses yet to be incurred to the Parliamentary election;
- f) Government has yet not introduced any stimulus package to the assaulted economy for which may need so much of funds in near future with the unprecedented unemployment which could come to light soon; whereas, should the election be conducted, the enormous amount of money which could have used for the regaining of the economy and the welfare of the society will have to be utilized for an Illegal Election;
- g) whomever reported to have contacted with a virus affected person or confirmed himself to be an confirmed case, shall be sent for Quarantine for 21-days according to the Quarantine Regulations, prevailing in the Country. Thus, had the Petitioner or any other contestant of the Election contagious with the Covid-19, I/he/she/they (and those who associated with them) shall be sent to self-quarantine or quarantine centers, thereby, I/he/she/they (and those who associated with them) will be denied of their Fundamental Right to Franchise and any other ancillary rights thereto, in upcoming Election;

h) hence, the Petitioner himself and/or those who have already (and yet be) affected persons from the Covid-19 shall be denied of their Constitutional rights enjoyed under Article 14;

IV. The Petitioner pleads that should the 1st to 4th Respondent to continue the election according to the Extraordinary Gazette Notification No. 2172/03 dated 20-04-2020 the life of the people will be at a stake and the Right to Life which is the golden tread of each concept of human right shall have no value.

V. The Petitioner pleads that should the 1st to 4th Respondent to continue the election according to the Extraordinary Gazette Notification No. 2172/03 dated 20-04-2020, the Directive Principles of State Policy and Fundamental Duties, such as, "the full realization of the fundamental rights and freedoms of all persons, the promotion of the welfare of the people by securing and protecting as effectively as it may, a social order in which justice (social, economic and political) shall guide all the institutions of the national life, conferred upon the Parliament, the President and the Cabinet of Ministers", shall be negated and no significance.

19. In the aforesaid circumstances, the Petitioner pleads that his Fundamental Rights enjoyed under Article 12(1), 14 and Directive Principles of State Policy and Fundamental Duties protected by Article 27 of the Constitution have been violated by the actions and inaction of 1st to 5th Respondents by ordering to conduct the Parliamentary Election 2020 by the Extraordinary Gazette Notification No. 2172/03 dated 20-04-2020.

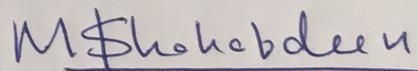
20. In furtherance of the above, the Petitioner pleads that the conduct and the acts of the 1st to 5th Respondents are malice, arbitrary and capricious, illegal, and *ultra vires* due to which the intervention of Your Lordships' Court is fit and proper.

21. The Petitioner respectfully pleads that, in the event of the 1st to 4th Respondents take any steps pending this application, to conduct the Parliamentary Election which is due on 20-06-2020, it would cause substantial loss, damage, hardship and prejudice to the Petitioner and the citizen at large who are intending to exercise their right to vote, as well as to protect their right to life, and the final relief of this application, if made in favour of the Petitioner would be rendered nugatory and ineffective unless the interim relief prayed for in prayed 'e' below is granted.
22. The Petitioner pleads that the Petitioner has not previously invoked the Jurisdiction of Your Lordships' Court in respect of the subject matter of this application.
23. The Affidavit of the Petitioner is annexed herewith in proof 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;
- b.) Declare that the total conduct of the 1st to 5th Respondents have violated the Fundamental Rights of the Petitioner enjoyed under Article 12(1), 14 and Directive Principles of State Policy and Fundamental Duties protected by Article 27 of the Constitution;
- c.) Make an order quashing the Extraordinary Gazette Notification No. 2172/03 dated 20-04-2020 published by the 2nd to 4th Respondents from which the Parliamentary Election is set to conduct on 20-06-2020;

- d.) Make an order quashing the Parliamentary Election which is set to conduct on 20-06-2020;
- e.) Grant and/or issue an interim order restraining the 1st to 4th Respondents from taking any step pending this application, to conduct the Parliamentary Election which is due on 20-06-2020, as it would cause substantial loss, damage, hardship and prejudice to the Petitioner and the citizen at large, as well as which would jeopardize the right to life of the citizen, until the hearing and final determination of this Application;
- f.) Give a directive to 1st to 4th Respondents, to advice the 5th Respondent and the President that as the latter 2-persons have failed to ensure the proper conditions for the conduct of a free and fair election and/or referendum according to Article 33(1)(d) of the Constitution, the former 1st to 4th Respondents could not be able to hold the Election;
- g.) grant costs; and
- h.) such other and further relief as to Your Lordships' Court shall seem meet.



Attorney-at-Law for the Petitioner

M. I. Shababdeen
LL.B (Hons); Attorney-at-Law

Settled by: Ashan Nanayakkara, Esq.