IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for mandates in the nature of Writs of Quo Warranto under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Case No: CA/WRIT/222/2018

1. Parana Liyanage Sunil Bandula
   410, Godigamuwa,
   Maharagama.

2. Pilane Withanage Sirisena
   70/3, Katuwawala Road,
   Maharagama.

3. Mudunpodige Don Chandrasiri Dayananda
   32/4, Mihindu Mawatha,
   Mirihana, Kotte.

4. Don Piyasena Manamperi
   429/1A, Makumbura,
   Pannipitiya.

5. Hewa Pathiranage Nihal Wasantha Kumara
   199/1, Depanama,
   Pannipitiya.

PETITIONERS

Vs.

1A. Ganegoda Habuthanthrige
Sarojinee
Maharagama Urban Council,
Maharagama.

2. Galkanda Arachchige Sunil
Piyarathna
Maharagama Urban Council,
Maharagama.

3. Heenpellage Dona Piumi
Prashadini
Maharagama Urban Council,
Maharagama.
(Substituted 1A, 2nd and 3rd Respondent)

4. Tiraj Lakruwan Piyarathna
365, Shanthi Mawatha,
Makumbura, Pannipitiya.

5. Hewa Pedige Asha Ganga Kumari
Maharagama Urban Council,
Maharagama.

6A. Ranpathiranage Gnanasiri
Dayananda Weerakoon
Maharagama Urban Council,
Maharagama.

7A. Jayagodage Chandrani
Maharagama Urban Council,
Maharagama.

8. Harshani Kemangani Sepalage
Maharagama Urban Council,
Maharagama.

9. Maha Ranasinghalage Ramani Wasantha
Maharagama Urban Council,
Maharagama.

10. Rajapaksha Pathiranage Somalatha
Maharagama Urban Council,
Maharagama.

11. Angoda Liyanage Pradeep Chaminda
Maharagama Urban Council,
Maharagama.

12. Ranasinghe Arachchige Gamini Ranasinghe
Maharagama Urban Council,
Maharagama.

13. Nishantha Wimalachandra
Maharagama Urban Council,
Maharagama.

14A. WanniArachchige Don Amarapala
Maharagama Urban Council,
Maharagama.

(Substituted 5th, 6A, 7A, 8-14A Respondents)

15. Hewa Gajaman Paththinilage
Chithrani Sugathapala.
109, Muththettuwa Road,
Mirihana, Kotte.

16. Liyanage Rewathi Mangalika
Sigera
294, Thalapathpitiya Road,
Madiwela, Kotte.

17. Savithri Gunasekara
84/2, Temple Road, Malapalla,
Pannipitiya.

18. Kariyawasam Haputhanthri
Gamage Kanthi Kodikara
No.425/23, Udahamulla,
Nugegoda.

19. Hettiarachchige Dinenthi Keyara
Jayasekara
138/18A, 3rd Lane, Pamunuwa
Road, Maharagama.

20. Inoka Anuradha Ranaweera
26/3, Jayanthi Mawatha,
Pamunuwa, Maharagama.

21. Heenatigala Madinage Rasika
62, Bodhiraja Mawatha,

Polwatta, Pannipitiya.

22. Thennakon Mudiyanselage
Nandawathi Kumarihamy
945/4, Rukmale Road, Kottawa,
Pannipitiya.

23. Manathungage Dona Varuni
Maharagama Urban Council,
Maharagama.

24. Liyanage Sumanawathi
Abeyratna
51, Jaya Road, Udahamulla,
Nugegoda.

25. Thanaweera Arachchige Lathika
Oshadhi Gunaratna
233/15, Millagahawatta,
Wattegedara Road, Maharagama.

(Substituted 15th - 25th Respondents)

26. Maharagama Urban Council,
Maharagama.

27. Secretary
Maharagama Urban Council,
Maharagama.

RESPONDENTS

Before: Hon. D.N. Samarakoon, J.

Counsel: Faisz Musthapha P.C., with Amarasiri Panditharatne
for the Petitioners.

Kuvera de Zoysa P.C., with P. Bandara for 02nd, 04th, 15th, 16th, 17th, 18th and 20th respondents.
P. Bandara for the 04th and 15th Respondents.

Argued on: 25.10.2023

Written Submissions: 14.12.2023 by the Petitioners.
by the Respondents.

Decided on: 22.03.2024

D. N. Samarakoon J.,

J U D G E M E N T

According to the Petitioners, the Petitioners above named are registered voters of the Maharagama Electoral Area, seeking the Writs in the nature of writs of quo warranto requiring the 1st to 25th Respondents above named to show what authority and by what right that each of them holds office as members of the Maharagama Urban Council and declare that their purported election to the Maharagama Urban Council is null and void and that they are not entitled to sit and vote as members of the said Urban Council.

The Petitioners have filed the above application dated 04th July 2018 in this Court, against the 57 Respondents, originally who were purported candidates for the local government election held on 10th February 2018, under the Local Authorities Elections Ordinance as amended for election of members to the

Maharagama Urban Council. The Petitioners in their original application dated 04th July 2018 stated inter alia as follows;

> (a). The Petitioners are permanent residents at the respective addresses stated in the caption above which are situated within the local limits of the Maharagama Urban Council area. They are registered voters for the electoral area of Maharagama.
>
> (b). They became aware through a newspaper published on 08th June 2018 that several intruders had assaulted some members of the Maharagama Urban Council after which a turbulent situation had occurred within the precincts of the said Urban Council.
>
> (c). The Petitioners in their original Petition stated that after making further inquiries they had ascertained the following;
>
> (i) The 1st to 25th Respondents who were candidates of the Independent Group No.2 contested for the 25 wards of the said Urban Council area had been selected as members of the said Council.
>
> (ii) The aforesaid 1st to 25th Respondents, (except the 12th and 14th Respondents) and the 26th to 44th Respondents who were in the additional list, were residents of the addresses given in the caption, which are situated outside the Urban Council limits of Maharagama.
>
> (iii) As morefully described in paragraphs 07,08 and 09 of the said petition, on the date of the commencement of the preparation or revision of the parliamentary register for the time being in operation for the Electoral District of Colombo, in which the Electoral Area of Maharagama Urban Council is situated, the aforesaid Respondents except the 12th and 14th Respondents, were not qualified to have their names registered in that register in as much as they were residents outside the Electoral Area of Maharagama Urban Council

and that their names were not entered in that Register. Only the 12th and 14th Respondents are residents of the said Electoral Area.

(iv) As such the aforesaid 1st to 25th Respondents except the 12th and 14th Respondents named in the original Petition were not qualified for election as members of the Maharagama Urban Council and/or to sit as members and/or to vote as members in as much as the aforesaid respondents did not have the required qualification in terms of Section 8 of the Local Authorities Elections Ordinance, namely they were not entitled to have their parliamentary register for the Electoral Area of Maharagama as they were the residents outside the said Electoral area.

(v) Subsequent to the results of the said election were announced two other residents in the Electoral Area of Maharagama had filed two election petitions bearing Nos HC/Spl/05/2018 and HC/Spl/02/2018 in the High Court of the Western Province seeking to quash the election of the aforesaid 1st to 25th Respondents but except the 12th and 14th Respondents, namely Rajapakha Mudalige Carolis and Tiraj Lakruwan Piyarathna respectively.

(vi) **After filing of the said elections petitions, sixteen members elected from the Independent Group No.2 namely the 1st to 04th , 06th to 10h , 18th to 23rd and the 25th respondents in the original petition resigned from their membership and the Returning officer purporting to act under Section 66 A (1) of the said ordinance appointed 26th to 40th Respondents in the original petition as members of the said municipal council to fill the vacancies created by the resignation of the said respondents.**

(vii) **Thereafter another six members elected from the said Independent Group No.2 namely the 17th,20th,26th,28th, 29th**

and the 30th Respondents resigned as members of the said council and the Returning Officer appointed 45th to 50th Respondents from the said original petition to fill the vacancies created by the said resignation.

(viii) Thereafter another two candidates of the said Independent group No.2 namely the said 27th and 47th Respondents in the original Petition resigned and the Returning Officer had appointed 41st Respondent to fill the said vacancies by the extraordinary gazette notification No. 2075/28 dated 14.06.2018, and the 5th Respondent in the said Petition did not take oath as a member and the Returning Officer had appointed 41st Respondent to fill the said vacancy by the extraordinary gazette notification No. 2076/17 dated 20.06.2018, and thereafter five more candidates of the said list, who had been subsequently appointed to fill the previously appointed) namely 31st 33rd 34th, 35th and 37th resigned and the Returning Officer had appointed 51st,52nd,53rd,54th,55th Respondents to fill the said vacancies by the extraordinary gazette notification No. 2076/19 dated 20.06.2018.

(ix) **The nomination paper submitted by the Sri Lanka Podujana Peramuna, to contest the said election with the "Pohottuwa" symbol, comprising the list of candidates contesting the said Election was rejected by the Returning Officer as such they could not contest the said election. The 45th -55th Respondents named in the original Petition are candidates due to contest the said Election and out of said Respondents, the 45th,46th, 47th, 48th, 51st, 52ndand 53rd Respondents were appointed by the Returning officer as members of the said Council to fill the vacancies by the members who had resigned.**

A Table specifying the appointments of members at the said election for respective wards and subsequent filling of vacancies by the Returning Officer by the relevant gazette notifications referred to above at the time of the filing of the original Petition is annexed to it marked "X".”

The petitioners in their amended petition dated 24 August 2018 marks a news feature article on Daily Mirror [the website says 21.02.2018] written by Miss Kalani Kumarasinghe [currently Feature Editor of the Daily Mirror] which says, as follows, [Lankadeepa newspaper dated 08.06.2018 marked P-6 along is also filed]

“Following campaigns led by candidates starkly divided on various issues, Sri Lanka on February 11 woke up to the news of a surprise win for the newly formed Sri Lanka Podujana Peramuna (SLPP) backed by former President Mahinda Rajapaksa. What was supposed to be an uneventful and peaceful election resulted in turmoil with uncertainty ruling the local political landscape.

While many were concerned over the future of the Unity Government, a peculiar incident reported from Maharagama meanwhile piqued the interests of voters and candidates alike. **Ahead of the February elections, the SLPP nominations to the Maharagama Urban Council were rejected in early December**. As a result SLPP announced its support for the independent group (Group 2) contesting with a motorcycle as its symbol. **Following these developments the Elections Commission explained that no candidate could resign from contesting until the elections were held**. The Commission stated that though some political parties announced their backing for independent groups, members of the elected independent group could not be replaced by members of any other political party.

However on February 11, reports emerged that candidates from the victorious independent group in Maharagama were not residents of the council's jurisdiction. According to these reports --with the exception of a few -- most candidates on the motorcycle group's list, were not residents of Maharagama. The addresses listed next to their names read as Divulapitiya, Badalgama and Wellawatta.

Many politicians challenged the appointments and questioned their faith in the new electoral system. Critics included the Janatha Vimukthi Permanuna and the Social Democratic Party which vehemently criticized the incident. The **Daily Mirror** spoke to the General Secretary of the Social Democratic Party, Thusitha Balasooriya, who took to social media criticizing the candidates elected to the Maharagama Urban Council.

"The SLPP claimed victory owing to the new electoral system. The objective of introducing the mixed electoral system was to give every village a representative in a Local Government Authority. This concept has been exploited by the SLPP. The party's continual request to the public was to vote for the 'Pohottuwa' or flower bud symbol urging them to heed no attention to the candidate they would vote for. The result of this was the election of six candidates of the same family, namely: Bombuwala Devage Samanmala Janaki, Bombuwala Devage Josephine, Devage Lakmini Madushani, Devage Vimalawathi, Bombuwala Devage Sujatha Dharmapriya and Bombuwala Devage Sarath Dharmapriya," Balasooriya said.

"**The candidate elected from the Rukmale Division, Bombuwala Devage Josephine is in fact eighty years old**! One of these candidates is a resident of Ampara, but has now become a council member. This exploitation by SLPP has been approved by the public as well," he said questioning the rationale of electing such candidates.

"**We have discovered that the Independent Group No 2 which contested for the Maharagama Urban Council was paid a sum of Rs. 5,000,000. Prior to receiving this sum an affidavit has been obtained from the independent group as well. A separate agreement had been signed stating that the elected candidates of the independent group would tender resignation making way for those in the rejected nominations list of the SLPP. Such corrupt acts would not only distort public opinion, but also lead to a significant waste of public monies**. Unfortunately this is not just the picture of Maharagama, but the situation observed wherever the SLPP has claimed victory," Balasooriya alleged.

The **Daily Mirror** approached the Executive Director of the Campaign for Free and Fair Elections (CaFFE) Rajith Keerthi Tennakoon to query his stance on the developments in Maharagama.

"**When the SLPP got its nomination list for Maharagama rejected they announced that it would be backing an independent group for the UC, which was their alternative. This is completely legal**. Now we are faced with a situation where the resignation of elected candidates can make way for other candidates to replace them. There are legal provisions to do that. However to make way for this, we need an environment where every single elected member has to resign. There is no exception for said process," Tennakoon opined.

"The SLPP had an agreement that they would support this independent group. They arrived at this decision at the very last moment, even after the postal votes were cast. What we are witnessing is actually a victory in spite of this group not receiving their postal votes."

Meanwhile the Eksath Lanka Maha Saba Party contesting under the 'snake' symbol in Thirappane, defeated the UNP, SLFP and JVP with 32.96% votes. Another Independent Group contesting under the Rhino symbol won a majority of 39.87% of votes in Mahiyangana. According to

Tennakoon however this is no cause for surprise. “It must be noted that this is nothing new and it was reported from several areas including Mahiyanagana and Tirappaney.”

Tennakoon believes the problem does not lie in the manner in which the Maharagama candidates earned their votes. “The majority of these contestants never came to Maharagama, they never even knew that they are candidates for this particular election. But they won a considerable number of votes. …..

“**The problem now is that there are some candidates who do not want to resign**. These candidates have been consulting opinions of experts about the next course of action. They are constitutionally elected members and it is up to them to decide whether or not to assume duties as council members. For those seeking to become members of the Maharagama Urban Council when the elected candidate resigns, it will not be an easy task.”

“On the other hand there may be a repetition of what took place in the Colombo Municipal Council several years ago,” Tennakoon said.

He referred to the May 2006 elections, where the UNP nominations list for the Colombo Municipal Council was rejected, an independent group contesting under the spectacle symbol secured 23 seats with the support of the UNP. “<u>A Trishaw Driver performed better than anyone else during these elections and eventually became the mayor</u>. We were very watchful of the developments during this tussle. There were several allegations regarding some officers in the CMC. To our surprise no corruption charges were levelled against this gentleman.”

“With such experiences in mind, it is my opinion that this sort of environment will come into play in Maharagama as well.

The people of Maharagama are fortunate if it transpires in a positive way," Tennakoon opined.

"We must keep in mind that these candidates were voted into power despite the presence of the candidates fielded by the opposition, including very senior politicians. The candidates who won in Maharagama may not be the most qualified and are mostly ordinary people. I have observed that some of these candidates are very capable of serving the community and they will not resign. Through this process, a better balance will be created," he added.

Speaking on the electoral system the CaFFE Executive Director said the situation in Maharagama is not a failure of the system or the candidate. "It is a failure of the voter. The situation will not be completely negative and would not be ridden by corrupt politics as expected. The process that is in formation will be a time consuming process, and will not happen overnight.

The **Daily Mirror** also spoke to Executive Director of People's Action for Free and Fair Election (PAFFREL) Rohana Hettiarachchi to obtain his views on the matter. "According to the law, when nominations are submitted, they require certain qualifications to be registered as a candidate for elections of the respective area of authority. Qualifications to be registered as a candidate at Local Authorities Elections are detailed in a separate section explaining the registration of electors," Hettiarachchi said.

Accordingly a person, who was on the first day of June in the year of the commencement of the preparation of the register, ordinarily resident in any area within the electoral district, is entitled to have his name entered in the electoral list. According to the Elections Commission, ordinarily resident means, the said person could be a resident of this particular electoral area, even though the initial residence is not the same**. For**

instance if a candidate's temporary residence is in Colombo, whereas his initial residence is elsewhere, he can be considered as an ordinary resident of that area where he dwells most of the time. Therefore such registration is not mandatory for contesting," Hettiarachchi said.

"The problem in this instance as reported to PAFFREL, is that this group comprises residents of Divulapitiya. They have been registered as voters in this district, but have not registered in Maharagama. We have not been able to verify these reports. **According to our preliminary findings, these individuals seem to be unaware of the fact that they have been candidates of this election**. **So the issue lies in the fact that voters of Maharagama were misled**. I view this incident as an instance where the voter has been deceived," he stressed.

Hettiarachchi said when the Election Bill was tabled concerns were voiced regarding this matter. "**We were of the opinion that a candidate should be a resident of the respective area, which is the only way to ensure real representation to Local Government bodies. However the present legal provisions have been established otherwise. The basic values of the electoral system is diminished from such occurrences**," he said.

"Even though similar incidents were reported from several other areas, only Maharagama has been highlighted. **We have received information that a group of garment workers have been included in a list of nominations in Polonnaruwa**. Deception has been carried out not only through independent groups. Some candidates have misled voters stating that government officers would be elected to office. Others had canvassed for votes **fielding one candidate in the list, but presenting another in the eye of the voter**. These were carried out to gain the popular vote. Yet another case was reported where a group of individuals who were not residents of the area had contested at elections.

If they are challenged in court, they would have to prove that they are qualified to register in that area. **Looking at the overall picture we have observed that voters have been deceived and misled," Hettiarachchi detailed**. Asked if there were legal provisions for such incidents to occur, he said as long as such incidents are not challenged in court, the Elections Commission would only reject the nominations based on the following factors:

1. If the complete deposit is not made
2. If the women's quota has not been fulfilled
3. If the secretary has not signed the nominations list
4. If the secretary's signature has not been certified
5. If the representative does not submit the nominations list
6. If the nominations list is not submitted before the deadline

Hettiarachchi added the Elections Commission is not equipped to evaluate the qualifications of each candidate within such a short period of time. "If candidates are corrupt, or have been charged in court, if they are residents of the area, these factors should be challenged in court by concerned parties. Political parties attempt to represent the people during elections. The basic premise is that they will not commit a fraud or deceive the voter[1]…."

Two more passages, which are not quoted here deal with "'Provisions in law to challenge erroneous appointments' – according to one Premathilake.

The feature article concludes saying

"Several attempts to contact the Elections Commission failed. However according to available data, **the Daily Mirror has observed that the**

[1] https://www.dailymirror.lk/article/Motorcycle-Group-leaves-Questionable-trail--146201.html

> **anomalies reported in the Local Government Election were not limited to Maharagama alone**. The confusion of voters and doubts over qualifications of the candidates as being ordinarily resident of their respective areas were reported from many parts of the island."

The local government election were held on 10.02.2018. The article is dated 21.02.2018, 11 days after the elections. Hence for whatever the value of this article, it passes the test of "spontaneity."

The petition has been amended in August 2018 and October 2019 because, as the above written submission narrates elected members who were respondents were resigning and new members were being appointed.

The bottom line is that except the 12th and 14th respondents, in the original petition whose names were mentioned, other elected candidates were not residents within the Urban Council limits of Maharagama.

According to the Executive Director of People's Action for Free and Fair Election (PAFFREL) Rohana Hettiarachchi, who was quoted in the above article,

> "According to our preliminary findings, **these individuals seem to be unaware of the fact that they have been candidates of this election**. So the issue lies in the fact that voters of Maharagama were misled".

This Court[2] had issued notice on the Respondents on 05.09.2018.

On 17.10.2018 the respondents who were represented had been directed to file objections. Argument had been fixed for 06.02.2019. On (i) 06.02.2019 (ii) 02.04.2019 (iii) 04.07.2019 (iv) 03.09.2019 (top of the list) (v) 19.02.2020 [more than 05 months in between (iv) and (v)] (vi) 06.11.2020 [more than 08 months having a mention date in between] [then dates had been given for substitution which has been objected to by the respondents] made the argument postponed. There was an inquiry fixed (apparently on substitution) for 31.08.2022. It is not

[2] A former bench of justices

clear what became of it. On that day amended caption has been allowed and the matter was fixed for argument for (vii) 16.12.2022. On that day it was re fixed for (viii) 13.02.2023. Again to (viii) 03.04.2023. **That was the first day this matter came before the Bench presided by me** [accompanied by Justice Iddawala] **due to reallocation of work after the appointment of the current President, Court of Appeal. The petitioners were absent and unrepresented. The counsel for the respondent said that the matter has become academic. I issued notice on the petitioners**. On a subsequent day Mr. Panditharatne appeared and submitted that the matter is of public importance.

Then it was fixed for argument on 25.10.2023, heard on that day; and hence judgment was fixed to be given by me with Justice Iddawala.

Judgment was fixed for 14.12.2023, having given written submissions date as 27.11.2023. The latter was a mention date. On that day no party was represented. On 14.12.2023 junior counsel for the petitioner informed that written submissions were tendered to the registry. There was no appearance for the respondents. On 26.01.2024 that junior counsel for the petitioner consented myself giving the judgment as Single Judge, for it was heard by me and Justice Iddawala. The latter has left judiciary. The Registrar was directed to inform the counsel for the respondents that the matter will be mentioned on 31.01.2024. Then after some dates on which there was no appearance for the respondents the judgment was fixed for 22.03.2024.

The limited objections of 26th and 27th respondents dated 05.05.2022 among other things state that in a Quo warranto application no substitution is permitted and when the original respondent ceases to hold office, the application becomes invalid. The objections of 2,4,15,16,17.19,20,21,22,23,24 and 25 respondents were filed on 21.10.2018.

They cite **K. Andiris vs. D. F. Thomarathna 75 NLR 238** in which de Kretser J., referred to In re Armstrong 25 LJQB 238.

It also says that under Local Government Election Ordinance No. 53 of 1946 the failure of the petitioners to name the election officer of the Maharagama Urban Council is fatal.

Next the petitioners submit in their written submissions under following headings as follows,

"**Appointment of the Respondents in the Amended Caption (1A, 02, 03, 6A, 07A, 8 to 14A and 15th to 25th Respondents) except the 4 Respondent, from the nomination paper of the Sri Lanka Podujana Peramuna to fill the vacancies**:

> 2.8. It is submitted that subsequent to the resignation of members and with the death of one member originally "elected"' as aforesaid to represent the respective wards of the said Council, except the 04th Respondent, the Respondents named in the Amended caption, have been appointed by the Returning Officer, purportedly acting in terms of the Section66 A(1) of the Local Authorities Elections Ordinance as amended by Act No. 22 of 2012 and by Act No. 01 of 2016.
>
> 2.9 It is respectfully submitted that the said purported above appointments to fill the vacancies created by the resignation of members are illegal null and void in as much as in the instant case the nomination paper submitted by the Independent Group No.2 is ab- initio void and/or an invalid instrument in as much as all the candidates (except Rajapakse Mohottige carolis and Tiraj Lakruwan Piyarathna, 2nd and 4th Respondents of the amended Petition respectively) are not qualified to contest and not qualified to be elected as members in terms of Section 8 of the said Act. This point of law is further substantiated by the fact that both sub Section (a) and (b) of Section 66 A (1) refers to the **qualifications** specified in Section 8.

2.10 It is respectfully submitted that said Act specifically contemplates the both requirements, namely, the qualifications (under sec.8) and the disqualifications (under sec.9) a member should possess to be elected and to sit or vote.

Section 8 of the said Ordinance states thus;

> "General qualification for membership
>
> Every person who is not disqualified as provided by section 9 shall be qualified at any time for election as a member of any local authority if-
>
> > (a) he was, on the date of the commencement of the preparation or revision of the parliamentary register for the time being in operation for any electoral area or any part thereof is situated, qualified to have his name entered in that register; and
> >
> > (b) he was, on the first day of June in the year of the commencement of the preparation or revision of that register, ordinary resident in that electoral area."

Section 9 of the Act states thus;

"Disqualifications for membership

> (1) No person shall, at any time, be qualified to be elected under this Ordinance, or to sit or to vote, as a member of any local authority, if such person at that time-
>
> > (a) is not a citizen of Sri Lanka, or....
> >
> > (b) is less than eighteen years of age; or
> >
> > (c)..
> >
> > (d) is-

(i) a judicial officer, or

(ii) a member of the armed forces or

(iii) a police officer or

(iv)…….

Therefore, it is submitted that, a person is qualified to be elected and to sit and vote as a member of any local authority, only if, that person shall have the qualifications set out in Sec. 8 and shall not have any disqualifications or should devoid of any disqualifications stipulated in Sec. 9 of the said Act.

Therefore, the Petitioners submitted that in the instant case, election of the persons nominated in the Independent Group No.2, except the aforesaid Rajapakha Mudalige Carolis and Tiraj Lakruwan Piyarathna, are ab-initio void in as much as those persons are not residents of the electoral area. This is borne out by the extracts of the electoral register in respect of the 44 persons included in the nomination paper of the Independent Group No. 2 marked A1 to A44.

It is submitted further out of the extracts marked A1 to A44, only the aforesaid Rajapaksha Mudalige Carolis (A12) and Tiraj Lakruwan Piyarathna (A14) are residents outside the local limits of Maharagama electoral area and not qualified to be elected and sit or vote as members of the Mahragama Urban Council". [*It should be, that,* ***except*** *those two the others are residents outside the electoral area of Maharagama*].

A.12 is actually Mohottige Carolis Rajapakshe. His residence as per A.12 is in 498/A Makumbure North Grama Niladhari Division. A.14 Galkanda Arahchige Viraj Lakruwan Piyarathne as per A.14 is from the same Grama Niladhari division. Others among A.01 to A.44 are residing outside the Urban Council Limits of Maharagama.

In regard to the others, for instance A.01 Hewa Thondilage Jayaseeli resides at Pamankada West. A.05 Galkanda Arachchige Sisira Piyaratne at Divulapitiya in Gampaha. A.09 Hathurusinghe Dewage Sunethra Priyadarshanie also at Divulapitiya. A.17 Subasinghe Arachchige Sumanawathie same. A.32 Ranadheerage Lakmalie Dilrukshi at Bollatha South at Gampaha. A. 35 Pushpha Damayanthi Vidanegamage at Hulftsdorp South. A.42 Goluva Marakkalage Tony Shantha is from Kochchikade South. A.44 Hathurusinghe Devage Nuwan Madushanka is from Marmite State, Akarangaha, Gampaha.

What is the "independent" interest these people have to serve the voters in the Urban Council area of Maharagama?

It is pertinent to consider the global position in democracies.

The Underpinning Rationale of Electoral Candidacy:

The concept of being an 'electoral' before becoming a 'candidate' underpins the very essence of democracy and societal representation. This motto not only ensures diversity and inclusivity within leadership positions but also strives to guarantee that democratic leaders authentically understand, represent, and empathise with the population and its corresponding needs and challenges. Thus, this analysis can conclude with the affirmation that the concept of a candidate being an electoral initially proves instrumental in maintaining the democratic standards.

Being an active participant in any democratic process requires a fundamental understanding of the procedures, rights, and responsibilities entailed. This part seeks to undertake an analysis of the assertion that to be a candidate, one should first be an electoral.

Democracy, eponymous for its methodology of selecting leaders through eligible citizen voting, holds 'electoral candidacy' as its nucleus. In essence, candidacy

means declaring one's ambition to run for a public office position while being an 'electoral' signifies a member of the electorate, referring to all eligible voters[3].

The principle of 'no taxation without representation' chiefly spearheads the democratic perception of governance. Hence, it posits that political leaders should represent the demographics thereby conferring absolute relevance to the ideology which grounds the argument that candidates should be drawn from the electorate[4].

Electoral candidates are potential leaders who propose to utilise public power and resources to deliver public goods. It is therefore logical that such individuals should have a perceivable stake in the governance process by being part of the electorates. This ensures they understand and share the public sentiment, offering innovative solutions to societal problems they too are affected by[5].

Historical context further illuminates the significance of this concept. The exclusion of women and slaves from the electorate and candidature narrate a story of their social and political marginalization. Their lack of representation painted a lopsided reality, lacking in diversity and consequently, the democratic ethos. This historical trajectory strengthens the discourse validating the interconnection between being an electoral and a candidate, arguing for a fair and balanced representation[6].

Furthermore, legal regulations in democracies around the world insist citizens be part of the electorate before considering candidacy. The UK's Representation of the People Act, for instance, provides legal backing to this assertion[7].

Giving consideration to the historical, legal, and democratic implications, the idea that one must first be of the electorate to seek candidacy comes to be

[3] (Paragraph 1, [1](https://www.parliament.uk/about/how/elections-and-voting/))
[4] (Paragraph 2, [2](https://www.history.com/topics/american-revolution/no-taxation-without-representation).
[5] (Paragraph 3, [3](https://www.britannica.com/topic/democracy)).
[6] (Paragraph 4, [4](https://www.jstor.org/stable/2646142)).
[7] (Paragraph 5, [5](https://www.legislation.gov.uk/ukpga/1983/2)).

interpreted as an essential democratic provision. It bolsters the essential democratic concepts of fairness, representation, and synchronisation in the dimensions of societal and governance realities. Only by recognising this interconnected relationship can democracies ensure that they perseveringly sustain their fundamental democratic ethos.

The petitioners further say in the above written submissions, that,

> "3. Should the Nomination Paper submitted by the Independent Group No2, have been rejected by the Returning Officer?
>
> 3.1. Section 31 of the Act state thus;
>
> "31. Rejection of nomination papers
>
> (1) The assistant returning officer shall, immediately after the expiry of the nomination period, examine the nomination papers received by him and reject any nomination paper-
>
> a) that has not been delivered in accordance with the provisions of subsection (5) of section 28 or
>
> (b) that **does not contain the total number of candidates required to be nominated** under sub section (2) of section 28 or [should connect to section 08? How he should satisfy himself. Not mechanical satisfaction]
>
> (c)…….

[Emphasis added in the written submissions of the petitioners]."

The returning officer has a duty to examine that the candidates are qualifiedin terms of section 08, not merely satisfy with the number. This can be done by merely examining the nomination paper itself where addresses of the candidates are given.

It is further submitted, that,

> "3.3. Had Returning officer examined the nomination paper of the Independent Group No. 2, he should have noticed or observed himself that there were not sufficient number of qualified candidates included in the nomination paper and he should have rejected that nomination paper in terms of Section 31(1) of the Act.
>
> Therefore it is respectfully submitted that the nomination paper submitted by the Independent Group No.2 is [a] nullity and /or void utterly without existence or effect in law for violating Sec.28 (2) of the said act namely, not setting out the names or otherwise not including such number of candidates qualified under section 8 to represent each ward of the Maharagama Urban Council. It is respectfully submitted that in this instance there should be 25 qualified candidates plus another thirty per centum of [the] total number in the additional list according to Section 28(2) (b).
>
> Therefore it is respectfully submitted that as such the said nomination paper submitted by the Independent Group No.2 is [a] nullity or void ab initio and has no legal effect".

The petitioners have reproduced the material parts in section 31 in full in their written submissions. It is as follows,

> "31. (1) The returning officer shall, immediately after the expiry of the nomination period, examine the nomination papers received by him and reject any nomination paper-
>
> (a) that has not been delivered in accordance with the provisions of subsection (5) of section 28, or
>
> (b) that **does not contain the total number of candidates required to be nominated under subsection (2) of section 28**; or…."

Section 28(2) of the Act says, that,

> "(2) Any recognized political party or any group of persons contesting as independent candidates (hereinafter referred to as an "independent group") **may** for the purpose of election as members of any local authority **submit one nomination paper** substantially in the form set out in the First Schedule, **setting out the names, in order of priority, of (i) such number of candidates as is equivalent to the number of members including the Mayor and Deputy Mayor to be elected for that local authority** (ii) increased by one-third of such number of members. The returning officer shall as soon as practicable make a copy of each nomination paper received by him and display such copies of nomination paper on his notice-board." **[Emphasis added in this judgment] [The Roman (i) and (ii) have been introduced by me, for the sake of clarity in explaining below].**

The nomination paper submitted by the Independent Group 02 did not contain (i) and (ii) above as it will appear from the above analysis. Hence there is no question that it must have been rejected by the returning officer, on the basis, that, there were no required number of candidates.

Hence this Court accepts the position of the petitioners that the nomination paper of the Independent Group No. 02 was void ab initio and invalid.

The petitioners further submit, that,

> "4. **Appointment of candidates set out or listed in the nomination paper submitted by the Sri Lanka Podujana Peramuna, which had been rejected by the Returning Officer earlier to fill the vacancies created by the resignation:**
>
> 4.1. It is respectfully submitted that, as evidence by the aforesaid extracts of electoral register marked A1 to A 44, except the two names referred to

above are not qualified under Sec.8 of the said Act to become members of the said Council. After the resignation of all those candidates set out in the nomination paper submitted by the independent Group No.2, the group leader had requested, purportedly under Sec.66A (1) (a) of the said Act, [for] the Returning officer to fill the vacancies, from the rejected list of candidates of the Sri Lanka Podujana Peramuna.

Thereafter the Returning Officer appointed candidates of the said list as more fully demonstrated in the Table marked "Z-2" stated above by gazettes notifications marked P11 and P-14 to P-22.

42. It is respectfully submitted that, appointments of candidates in the above manner by the said gazettes marked P-14, P17, P17A, P17B, P17D to P22, are ultra vires the said Act, as such the said appointments are also [a] nullity and /or void ab-initio without any existence or effect in law".

Section 66A was inserted by Amendment Act No. 22 of 2012. Section 66A(1)(a) reads as follows,

"Filling of vacancies in local authorities.

66A. (1) **Where the office of a member of a local authority falls vacant under the provisions of the Municipal Councils Ordinance (Chapter 252) Urban Councils Ordinance (Chapter 255) or the Pradeshiya Sabha Act, No. 15 of 1987, as the case may be**, the returning officer appointed for the electoral area in which such local authority is situated, shall, where such vacancy is in respect of a member

(a) elected for any ward in that electoral area by ballot, **request the secretary to the recognized political party or the leader of the independent group**, as the case may be, **to which such member belongs**, to nominate within thirty days of the occurrence of the vacancy, any other person who is qualified under section 8 of this Ordinance to be elected as a member of

local authority to fill that vacancy in the ward in which the vacancy has occurred; or…" [Emphasis added in this judgment]

Here when vacancies arose on positions filled by those elected from Independent Group 02, they were purportedly filled (a) from the list of Sri Lanka Podujana Peramuna (b) which list has been already rejected.

If (a) is ultra vires [*the Act does not permit it*] (b) is irrational and disproportionate [*that list was rejected, which means, that, it is not there*]

Now what does the case cited for the respondents say?

"1969 *Present* : **de Kretser, J., and Wijayatilake, J.**

K. ANDIRIS, Petitioner, and D. F. THOMARATNA**,** Respondent

S. C. 293 / 69-Application for a Writ of Quo Warranto

Quo warranto-Requirement that application should not be filed until respondent had already assumed office-Person elected as member of a Village Council-Date when he assumes office-Village Councils Ordinance (Cap. 257), s. 11 (1) (2).

A writ of quo warranto does not lie unless the person proceeded against has already assumed office at the time when the application for the writ is filed. Accordingly, where a person is alleged to have been elected as a member of a Village Council when he was disqualified for election, **an application for a writ of quo warranto to set aside the election on that ground will not lie if objection is taken in limine that on the date of the application the respondent, although he had been elected, had not yet assumed office as member in conformity with the requirements of section 11 (2) of the Village Councils Ordinance**".

The respondents rely on what de Kretser J., referred to as the principle established in In re Armstrong (1856) 25 L. J. Q. B. 238.

His Lordship Justice de Kretser said at the last three paragraphs of that judgment that

> "**As was pointed out in Re Armstrong the Writ of Quo Warranto does not lie unless the Court is satisfied that the person proceeded against has been in actual possession and user of the office**.
>
> Halsbury Vol. 11 (Simonds Ed.) Page 148 points out that a mere claim to be admitted to office was not sufficient; there had to be a possession or user as well as a claim. In the instant case the Respondent could not be the Member for Ward 2 until July 1969 for Section 11 (2) of Cap. 257 provided that his predecessor continued in office until that time.
>
> Swan J. pointed out in Dharmaratne v. The Commissioner of Elections et al.[2] that where a person has been irregularly elected as a member of a local body but had not yet assumed office the proper remedy to have his election set aside is not by Quo Warranto".

The position of the respondents is that since those who were elected from the Independent Group 02 either resigned prior to the institution of the petition or subsequent to that, prior to the hearing, the writ of Quo Warranto would not lie.

But, that is not what the above case says.

In K. ANDIRIS, Petitioner, and D. F. THOMARATNA, Respondent as well as in Armstrong's case, the person elected had not yet assumed office.

The judgment says, "the Writ of Quo Warranto does not lie unless the Court is satisfied that the person proceeded against **has been** in actual possession and user of the office…" Now in this case, the respondents against whom that writ is sought have been in possession of that office, whether they subsequently resigned or not and action purportedly taken in terms of section 66A(1)(a) arises due to such vacancies created, which is a result of, or in other words, which was caused by, those respondents having been in possession; and them having vacated those offices.

Hence there is no reason, not to issue the writ, on account of the purported principle in In re Armstrong 1856.

In regard to the alleged futility of adjudicating the present application, for the period of the council is over, the petitioners have referred to CENTRE FOR POLICY ALTERNATIVES (GUARANTEE) LIMITED AND ANOTHER v. DAYANANDA DISSANAYAKE, COMMISSIONER OF ELECTIONS AND OTHERS 2003 (1) SLR 293 in which Justice Mark D. H. Fernando said, that,

> "FUTILITY
>
> At the commencement of the hearing both learned President's Counsel for the Respondents submitted that the 2nd Respondent had ceased to hold office as Chief Minister and that it would be futile to hear and determine the appeals. Both learned Counsel for the Petitioners contended that the 2nd Respondent had ceased to hold office even prior to the grant of special leave to appeal, but that no objection was taken at that stage; and that special leave to appeal had been granted on a matter of great public importance. If the objection of futility is now upheld, the Court of Appeal judgement will be regarded as authoritative and binding, in respect of all future vacancies in any Provincial Council, and the Commissioner would be bound to act on the basis of that judgment, thereby giving rise to fresh litigation.
>
> In this case we are not faced with a situation in which the impugned decision or declaration had ceased to be operative before the litigation commenced (as in Punchi Singho v Perera,) or where an order for relief might be futile because the official to whom it was directed had lawful authority to revoke it (as in Ramaswamy v Moregoda). **On the contrary, it is the law's delays which have given rise to the objection of futility**. In Sundarkaran v Bharathi, the petitioner prayed for certiorari to quash the refusal to issue him a liquor licence for 1987 and for mandamus to grant him that licence. In September 1987 the Court of Appeal dismissed

the application. In November 1988 - long after the end of the relevant year - this Court set aside the judgment of the Court of Appeal, quashed the decisions of the respondents, and ordered that the Respondents should make due inquiry upon its merits in regard to any future application which the Petitioner might make for a liqour licence. Amerasinghe, J, observed that the Court would not be acting in vain, and that quashing the decision not to issue him a licence for 1987 and requiring that he be fully and fairly heard before a decision is arrived at with regard to any future application would not be a useless formality".

The petitioners have cited the case of Sudhakaran vs. Bharathie a judgment of the late Dr. A. R. B. Amerasinghe given in November 1988. In SUDHAKARAN v. BHARATHI AND OTHERS decided in September 1987, the Court of appeal dismissed the petitioner's case.

However, in the Supreme Court in November 1988, Justice Amerasinghe said, that,

> "I do not believe that this Court will be acting in vain or that quashing the determination of the 1st Respondent not to renew the Petitioner-Appellant's licences for the year 1987 and requiring that the Petitioner-Appellant be fully and fairly heard before a decision with regard to any future applications for licences are made, will be only a useless formality.
>
> I would express no opinion on the question of the validity of the Circular in question or the validity of Paragraph 5 thereof because it is unnecessary for me to do so having regard to the opinion I have reached on the third and fourth propositions of Counsel for the Petitioner-Appellant. I prefer to leave these important questions open until they arise in a case where decisions on them are necessary."
>
> [1989 (1) SLR page 46 at page 62]

In paragraph 6.2 of the written submissions, which is reproduced below, the petitioners draw parallels to laws delays in that case decided by Justice Mark Fernando and in this case.

> "6.2. It is respectfully submitted that, this application was filed in July 2018, soon after the Local Government election was held. It is submitted that application could not take up for hearing due to several reasons, inter alia the resignations of members on numerous occasions and the appointments of new members by the returning officer to replace those who resigned as depicted in [Z.2] The Covid -19 Pandemic disturbed the functioning of courts regularly. It is submitted as held by the Supreme Court, law's delay which has caused the objection of futility, would not prevent a court hearing a case and the Court would not be acting in vain. It is respectfully submitted that in this application too, the Petitioners, are residents of the Maharagama Urban Council, who are interested in the proper functioning of Council by democratically appointed members and therefore should not deny Justice."

As per the news item from the Daily Mirror quoted extensively above, it appears, that, not only at Maharagama in February 2018, but similar incidents have taken place in various electorates in the island, including an incident

(i) in May 2006 elections,
(ii) where the UNP nominations list for the Colombo Municipal Council was rejected,
(iii) an independent group contesting under the spectacle symbol secured 23 seats with the support of the UNP and
(iv) "A Trishaw Driver performed better than anyone else during these elections and eventually became the mayor"

If, the votes cast have been cast so, in that person's name and have been influenced by his own candidature and nothing else, that person's cast, creed, religion, race, occupation (lawful) or any other creation of the human mind to

classify Homo Sapiens Sapiens into groups will not matter for his appointment as his worship the mayor or to any high office. That is the spirit of democracy. But if, that person gets, at least, a lion's share of votes cast to him, in consideration of the might and popularity of a party of which the list has been rejected, there is a difference. **But that is not the question for decision in this case.** The question for decision in this case is **(a)** whether the list of Independent Group 02 did not fulfil the requirements in section 8(b) of Local Authorities Elections Ordinance No. 53 of 1946 (as amended) **(b)** whether it should have been rejected by the returning officer in terms of the provisions of section 31(1)(b) of the Ordinance read with section 28(2) of the Ordinance; and **(c)** whether the filling of the vacancies created by resignation, etc., of the candidates elected from Independent Group 02 list by another political party whose list was rejected is intra vires the provisions of section 66A(1)(a) of the Ordinance.

As it has not arisen in this case for decision, this Court does not decide the wider question, whether when the list of party A is rejected, it can ask its voters to vote for group B.

Whether candidates of group B can get elected by votes that would have been cast for party A; had not its list been rejected; and can those elected from group B now carry on what the candidates of party A would have done, had their list not been rejected, are matters of agreement; and in any event do not arise for decision in this case.

But whether in the above scenario (a) the list of group B did not fulfil requirements that it should have fulfilled in law (b) must have been rejected or (c) the legality of filling vacancies created due to resignation, etc., of members of group B from the rejected list of party A are the questions for decision in this case. And also, since they arise due to the "agreement" referred to in the immediately previous paragraph; and as that appears to have taken place in the past; and will take place in the future; and questions similar to those in (a) (b) and (c) also will arise in future too, there is no futility in deciding this case.

As for the law, the petitioners refer to **Wade & Forsyth 10th edition** page 250, "**All invalid administrative acts are void in law"** and page 251 "**The presumption of validity and retrospectivity**".

12th Edition of Wade in 2023 says thus,

In the 12th edition Wade deals with "Invalidity and Voidness" which includes "All invalid administrative acts are void in law" and "The presumption of validity and retrospectivity" in greater detail and depth from page 228 to 231, which is quoted as follows, **[Beginning of the Quotation]**

"4. **INVALIDITY AND VOIDNESS**

A. **ALL INVALID ADMINISTRATIVE ACTS ARE VOID IN LAW**

"An act or order which is ultra vires is a nullity, utterly without existence or effect in law. That is the meaning of 'void', the term most commonly used. In several decisions the House of Lords has made it clear that 'there are no degrees of nullity' and that errors such [From page 228] as bad faith, wrong grounds and breach of natural justice all necessarily involve excess of jurisdiction and therefore nullity. This was merely to restate what has always been a fundamental rule. Lord Diplock made it clear that 'void' is the correct term in any such context, saying:

> It would, however, be inconsistent with the doctrine of ultra vires as it has been developed in English law as a means of controlling abuse of power by the executive arm of government if the judgment of a court in proceedings properly constituted that a statutory instrument was ultra vires were to have any less consequence in law than to render the instrument incapable of ever having had any legal effect. [In the Hoffman La Roche case]

Quoting this passage with approval, Lord Irvine LC has said that when an act or regulation has been pronounced by the court to be unlawful, it is then recognised as having had no legal effect at all. This consequence flows from the ultra vires principle or "equally acceptably" from the rule of law. The Supreme Court has been equally emphatic: an unlawful act was 'null and of no effect. The voidness of invalid acts also flows from the classic approach to ouster clauses and the necessity of collateral challenge to the rule of law as explained elsewhere. **But, as will be seen, an absolute approach to invalidity, although principled and resting upon high authority, poses conundrums that need to be understood in order to be resolved**.

B. **VOID ACTS (WHATHER THE DEFECT IS LATENT OR PATENT) MAY APPEAR VALID UNTIL SET ASIDE BY A COURT**

The first of these is that an invalid act may not appear to be invalid, and persons will act on the assumption that it is valid. In a well-known passage Lord Radcliffe said

> An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders. [Regina (Miller) vs. The Prime Minister [2019] UKSC 41]

This is a description of an act that is voidable (i.e. valid until set aside by the court). And in many cases, such an act can only be effectively resisted in law by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly [Page 229] in the House of Lords and Privy Council, without distinction between patent and latent defects. To the same effect is this statement by Lord Irvine LC

> No distinction is to be drawn between a patent (or substantive) error of law or a latent (or procedural) error of law. An ultra vires act or subordinate legislation is unlawful simpliciter and, if the presumption in favour of its legality is overcome by a litigant before a court of competent jurisdiction, is of no legal effect whatsoever. [Boddington vs. British Transport Police [1999] 2 A. C. 143]

Lord Diplock had added that there might be no one entitled to sue, for example if a statutory time limit had expired. In that case the order would have to stand. Cooke J expressed the same idea in a New Zealand case: Except perhaps in comparatively rare cases of flagrant invalidity, the decision in question is recognised as operative unless set aside.

Yet even in the case of flagrant invalidity it remains necessary for the court to pronounce. **It cannot be right to say, as Lord Denning MR once did of a defective rating list, that "there is no need for an order to quash it. It is automatically null and void without more ado[8]'**. The only difference is, as Lord Irvine LC has pointed out, that the citizen may feel sure enough of their ground to take no action and rely on the invalidity if they should be sued or prosecuted. But that is their decision, and they must accept the risk of uncertainty. Only the court's judgment can eliminate that risk. The availability of collateral challenge at least ensures that the citizen cannot be coerced on the basis of an illegality.

C. **THE STATUS OF ACTS MADE ON THE ASSUMPTION THAT EARLIER ACTS ARE VALID**

If an invalid act has no effect at all, then an act made on the assumption that an earlier act (now known to be invalid) was valid, would itself be

[8] Lord Denning here is perfectly correct in principle. It is in perfect accord with Chief Justice Kinsey's opinion in November, 1794, in The State vs. Justices, & c., of Middlesex 1 N. L. J. 244, Supreme Court of Judicature of New Jersey, THE STATE vs. JUSTICES, & c., OF MIDDLESEX. November Term, 1794, which I quoted in detail in my judgment in C. A. RII 46 2023 dated 15.02.2024. But the rule against that principle of justice is based on policy to safeguard third parties who may have dealt with the creation of the voidable and wrong and also unjustifiable position of law.

invalid: for otherwise this would be to give some legal effect to that first invalid act. For instance, A may be convicted before the justices of breaching a byelaw, but in later proceedings it may be established that the byelaw was tainted by illegality and consequently quashed. Is the conviction of A valid? Surely not if the quashing of the byelaw denies any legal effect to it?

But for brutally practical reasons some legal effect has to be given to invalid acts. The law is not omnipotent; it cannot set everything right[9]. Unlawful activity may [and does] have effects which cannot be rectified. Innocent third parties will have done all sorts of things that cannot be reversed or which it would be gravely unjust to reverse... The law cannot wash away all signs of illegality. Here then is the conundrum that invalid acts are theoretically void but functionally voidable. And the challenge set for administrative law theory is to give a principled account of the legal effect of invalid acts. Which are the acts which if invalid, bring all that comes after them tumbling down? And which are the acts, all be they invalid, that may be relied upon to make valid later decisions. **Several ways of resolving this conundrum have been put forward, these are discussed below**. [page 230]

D. **THE DOMINO EFFECT**: **AN INVALID ACT KNOCKS OVER ALL THAT COMES AFTER**

But this is the context in which a few words may be added on the Supreme Court's approach to this issue in the case about judicial review of the prime minister's advice to Her Majesty to prorogue Parliament. [Regina (on the

[9] This is the result of the existence of the Comma of Pythagoras, which I perceived at least in 2017, to be, that which prevent the dispensation of absolute justice. "The Pythagorean comma is a small interval that results from the difference between twelve perfect fifths and seven octaves. It is also the difference between enharmonically equivalent notes, such as D ♭ and C ♯, in Pythagorean tuning." It is said, that "The Pythagorean comma demonstrates that our tonal system is not perfectly consistent but has a gap whose form and cause I will describe in this post. The comma is relevant in terms of both our Pythagorean comma musical practice, since it has very specific effects, and of philosophy and science, since it is typical of the problems that we observe in the interplay of our three worlds (according to Penrose). Thus it is a topic that is not solely relevant to musicians but also to people who are interested in the question as to how mathematics (ideal world), physics (physical world) and our experience (mental world) relate to each other". That is why law, physics and music resonate together.

application of Miller) vs. The Prime Minister [2019] UKSC 41]. The court having found that it was not precluded by Parliamentary privilege from considering the validity of the prorogation itself. The logical approach to that question is to start at the beginning, with the advice that led to it. That advice was unlawful. It was outside the powers of the Prime Minister to give it. This means that it was null and of no effect.… It led to the Order in Council which, being founded on unlawful advice, was likewise unlawful, null and of no effect and should be quashed. This led to the actual prorogation, which was as if the Commissioners had walked into Parliament with a black piece of paper. It too was unlawful, null and of no effect.

The domino approach exemplified by this case was obviously attractive to the Supreme Court but it is patently impractical as a general approach to the questions of Invalidity, it worked in this case and will work in many other cases. But for the reasons set out above an invalid act must sometime have legal effect.

[The petitioners have further submitted on the following [on "E"] too, the relevant part now being quoted from the 12th Edition of Wade]

E. **THE PRESUMPTION OF VALIDITY AND RETROSPECTIVITY**

The House of Lords held in 1975 that there is a presumption of validity in favour of a disputed order until set aside by the court. And this is so even where temporary obedience to the disputed order would cause irreparable loss to a party. But their landships have since been held that this presumption was "an evidential matter at the interlocutory stage and involved no "sweeping proposition that subordinate legislation must be treated for all purposes as valid until set aside." **There is no rule that lends validity to invalid acts The presumption of validity, therefore, is temporary and procedural only, it**

does not determine the validity in law of the disputed act[10]. [Boddington I eared]

Moreover, since a void administrative act is, and always has been, non-existent in law, a finding that an act is void will generally be retrospective. **The House of Lords so held in the case of a prisoner whose release date had been wrongly calculated so that she remained in prison fifty-nine days longer than she should have. The prison governor had calculated the date in reliance upon the law as it was then laid down. But the Court of Appeal later changed the mode of calculation. The governor could not rely upon either a presumption of validity or the non-retrospectively of the finding that the detention was unlawful. The prisoner recovered damages for wrongful imprisonment from the prison governor. This may seem unfair to the governor who had acted in good faith and reasonably throughout. <u>But that is because the tort of wrongful imprisonment is a tort of strict liability, not because the finding of voidness was retrospective</u>**.

[Page 231]

On the basis of the above discussion on law,

(i) This Court issues writs in the nature of writs of quo warranto requiring the 01st to 25th respondents (excluding 1st, 4th, 6th, 7th, and 14tth respondents but including 1A, 6A, 7A and 14A respondents) (a) to show by what authority and by what right that each of them hold office as members of the Maharagama Urban Council and (b) declare[11] that their purported election to the Maharagama Urban Council is null and void

[10] As I said at footnote number 07, this is based on policy; policy does not last like principle – D. N. Samarakoon

[11] In Mohambaram v. Jayavelu, A.I.R. 1970 Mad.63; Durga Chand v. Administration, AI R 1971 Del.73. cases, the Court opined that an appointment to the office- of a public prosecutor can be quashed through quo warranto if in contravention of relevant statutory rules as it is a substantive public office involving duties of public nature of vital interest to public.

and (c) that they are not entitled to sit and vote[12] as members of the said Urban Council [excluding add 04th] [Nomination paper not validity here]

(ii) However, it must also be said, that, the petitioners do not wish to contest or question the validity of acts of those respondents performed purported to be by virtue of those offices, affecting third parties.

[Finally accepted amended caption must apply in regard to this judgment]

The questions (a) (b) and (c) at page 33 above are answered in favour of the petitioners.

There is no order on costs.

Judge of the Court of Appeal

[12] In K. Bheema Raju v. Govt, of A.P., A,I.R. 1981 A.P. case, the Andhra Pradesh High Court quashed the appointment of a government pleader as the procedure prescribed in the relevant rules for this purpose had not been followed.