

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

In the matter of an application for *Writs of Certiorari* and/or *Mandamus* and/or *Prohibition* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**C.A. (WRIT) 86/2020**

1. **Ven. Weadinigama Wimalatissa Thero**  
General Secretary,  
Ape Janabala Pakshaya,  
Reswehera Wellawa Temple,  
No.17, Asgiriya,  
Kandy.
2. **Ven. Galagodaaththe Gnanasara Thero**  
No.615 C, Sadhdharmarajika Viharaya,  
Nawala Road,  
Rajagiriya.
3. **Kondasinghe Patabandi Wijendra**  
**Gamladhdhalage Wasantha Keerthi Rathna**  
No.17, Uduweriya,  
Mahawa.
4. **Ambagaha Kotuwe Gedara Nilantha Saman**  
**Bandara Dissanayake**  
No.25, Silveraj Harampola,  
Mawathagama.
5. **Nishshanka Arachchilage Jayalal Nishshanka**  
No.54, Yaya 5,  
Rajanganaya.

6. Walimuni Amila Janapriya Mendis Abeysekara  
Sisiletha, Muththettugala,  
Dambulla Road,  
Kurunegala.
7. Rammeththage Isuru Madhuranga  
Adukkane,  
Moragane.
8. Ekanayake Mudiyanselage Jayathilake  
No.521, Galapitiyagama,  
Nikaweratiya.
9. Yohan Dileepa Jayathilake Senevirathne  
No. 25, Sampathwaththa,  
Dambulugama,  
Dambulla.
10. Ekanayake Mudiyanselage Dilusha Lakmal Ekanayake  
No.345/3, Palamu Koonwewa,  
Hulogedara,  
Nikaweratiya.
11. Hewasinghe Arachchilage Sampath Wipulasena  
No.138/l, Kattamberiya,  
Makulpotha.
12. Muthugalage Nishantha Rathnayake  
Kudakandegama,  
Wellawa.
13. Kalutharage Manel Ganga Kumari  
No.6, Nisala Place,  
PahalaBamunussa,  
Maspotha.

14. Madurajapathiyalage Nimal Shantha  
No.87, Pubbowa,  
Padeniya.
15. Kasthuri Arachchige Rajitha Prem Viraj  
Kasthuri Arachchi  
No.350, Labuyaya,  
Kuliyapitiya.
16. Rathnayake Mudiyanseilage Chuulanga  
Rathnayake Madawala  
No.73, Upper Madawala,  
Uhumeeya.
17. Kasthuri Arachchilage Niroshana Budhdhika  
Kasthuri Arachchi  
No.368, Dhammadoya Mawatha,  
Henamulla,  
Kurunegala.
18. Rathnayake Arachchige Eranda Kumara  
Nawarathne  
No.399, Hewanathenna,  
Panliyadda.
19. Ruwan Sanjeewa Bandara Ralapanawa  
Sinhagama,  
Nochchiyagama.

PETITIONERS

1. R.M.R. Rathnayake  
Returning Officer,

Kurunegala Electoral District,  
Elections Office-Kurunegala,  
Kachcheri Road,  
Kurunegala.

2. Gamlathge Dilip Shantha  
Assistant Returning Officer,  
Kurunegala Electoral District,  
Deputy Commissioner of Elections,  
Elections Office-Kurunegala,  
Kachcheri Road,  
Kurunegala.
3. Akila Viraj Kariyawasam  
General Secretary,  
United National Party,  
“Sirikotha”,  
No. 400, Kotte Road,  
Pitakotte.
4. Ven. Baththaramulle Seelarathna Thero  
General Secretary,  
Janaseth Peramuna,  
No.185, Dewala Road,  
Thalangama South,  
Baththaramulla.
5. Lakshman Nipunaarachchi  
General Secretary,  
Jathika Janabalawegaya  
No.464/20, Pannipitiya Road,  
Pelawaththa,  
Baththaramulla.

6. Aruna De Soyza  
General Secretary,  
National Democratic Front,  
Galle Road,  
Naape, Kosgoda.
7. A.H. Stefan  
General Secretary,  
Jathika Sanwardhana Peramuna,  
C, 35, Augusta Hill,  
Peradeniya.
8. Kumar Gunarathnam  
General Secretary,  
Peratugami Samajawadhee Pakshaya,  
No.553/B/2, Gemunu Mawatha,  
Udumulla Road,  
Baththaramulla.
9. Kamal Nissanka  
General Secretary,  
Liberal Party,  
No.5A, Kirimandala Mawatha,  
Narahenpita.  
Colombo 5.
10. P.D.K.K.P. Liyanage  
General Secretary,  
Sri Lanka Labour Party,  
No.7, Summer Place,  
Colombo 7.
11. Sagara Kariyawasam  
General Secretary,

Sri Lanka Podujana Peramuna,  
No.8/l1, Robert Alwis Mawatha,  
Boralesgamuwa.

12. Mahinda Dewage

General Secretary,  
Sri Lankawe Samajawadhee Pakshaya,  
No.2/69, Melfet Gardens,  
Gemunupura, Kothalawala,  
Kaduwela.

13. Ranjith Madduma Bandara

General Secretary,  
Samagi Jana Balawegaya  
No.347/A, Kotte Road,  
Mirihana,  
Nugegoda.

14. Jayantha Liyanage

General Secretary,  
Sihaladheepa Jathika Peramuna,  
No.14/5, A, Dharmapala Mawatha,  
Polaththapitiya,  
Kurunegala.

15. Hon. Attorney General

Attorney General's Department,  
Colombo 12.

RESPONDENTS

In the matter of an application for *Writs of Certiorari* and/or *Mandamus* and/or *Prohibition* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (WRIT) 87/2020

1. **Ven. Weadinigama Wimalatissa Thero**  
General Secretary,  
Ape Janabala Pakshaya,  
Reswehera Wellawa Temple,  
No.17, Asgiriya,  
Kandy.
2. **Ven. Akmeemana Dhayarathana Thero**  
Buddhist Centre,  
Anagarika Dharmapala Mawatha,  
Dehiwala.
3. **Ven. Kiribban Aare Vijitha Thero**  
Paramadharmodhaya Viharaya,  
Sri Sangabodhi Mawatha,  
Wallampitiya.
4. **Ven. Madille Pangngaloka Thero**  
Samadhi Viharaya,  
Edhirisinghe Road,  
Nugegoda.
5. **Jayasuriya Arachchige Shalika Lakpriya Perera**  
No.325/1/C, Ramanayake Mawatha,  
Erewwala, Pannipitiya.
6. **Makewita Appuhamilage Viraj Warnaka Makewita**  
No.326/4/A, 11<sup>th</sup> Lane,  
Sirimangalawaththa,

Piliyandala.

7. Kaluthara Koralalage Don Gamini Jayaweera  
No.119, Kandhewaththa Road,  
Nugegoda.
8. Shanthi Kaushalya Abeywickrama Kannangara  
No.2/2, Ewarihena Road,  
Polhengoda,  
Colombo 5.
9. Alahapperuma Dhamith Saranga  
Sanasuma, Walakumbura,  
Witharandeniya,  
Thangalla.
10. Herath Mudiyanselage Saman Wickramarathne  
No.128, Dedigamuwa.
11. Ajith Wijesinghe Dewapurage  
No.15/3, 3<sup>rd</sup> Lane,  
Agulana Railway Station Road,  
Moratuwa.
12. Sugeeshwara Nishantha Sirimanna  
No. 206/30, Balika Niwasa Road,  
Rukmale,  
Pannipitiya.
13. Munusamy Rajendran  
No.116/D/20, Bandaranayakepura,  
Rajagiriya.
14. Solanga Arachchige Don Prasanna Wimal  
Gunasinghe  
No.314/23, Solnga Drive,  
Himbutana.

- 15. Meepe Arachchige Ajantha Padmasiri**  
No.151/35, Serpentine Road,  
Borella, Colombo 8.
- 16. Ven. Warayaya Samitha Thero**  
No.148/40, Nimalarama Samadhi Buddhist Centre,  
Horagala East,  
Halbarawa.
- 17. Hewa Pathirannehalage Thiwanka Madhushani Pathirana**  
No.314/14C, Rukkaththana Gaha Waththa,  
Himbutana.
- 18. Nugadeni Arachchige Bhathiya Anurudhdha Kumarasinghe**  
No.1/417, Shiromani Mawatha,  
Piliyandala Road,  
Maharagama.
- 19. Chinthaka Wagishwara Weerakoon**  
No.19, Sanganandha Mawatha,  
Mathale.
- 20. Egodage Shankar Asanga Perera**  
No.B/80/02/03,  
Maligawaththa Flats,  
Colombo 10.
- 21. Madhushan Hareendra Kapugama Geeganage**  
No.3/22, Stanely Thilakarathne Mawatha,  
Nugegoda.
- 22. Baalage Harendra Janapriya Gahdiyawasam**  
No.109/4, Dhutugamunu Weedhiya,  
Kohuwala.

**23.Malawwita Rallage Udhayabandara**

No.T1/1, National Flats,  
Surfan Time Road,  
Borella.

**PETITIONERS**

-Vs-

**1. Pradeep Yasarathne**

Returning Officer,  
Colombo Electoral District,  
Elections Office-Colombo.

**2. P.A.S. Senaratne**

Assistant Returning Officer,  
Colombo Electoral District,  
Deputy Commissioner of Elections,  
Elections Office-Colombo.

**3. Akila Viraj Kariyawasam**

General Secretary,  
United National Party,  
“Sirikotha”,  
No. 400, Kotte Road,  
Pitakotte.

**4. Keerthi Kariyawasam**

General Secretary,  
Eksath Jathika Waamanshika Peramuna,  
No.1003-1/1,  
Sri Jayawardhanapura Road,  
Rajagiriya.

5. Sirithunga Jayasuriya  
General Secretary,  
Eksath Samajawadhee Pakshaya,  
No.53/6, E.D. Dabare Mawatha,  
Narahenpita,  
Colombo 5.
6. Ven. Baththaramulle Seelarathna Thero  
General Secretary,  
Janaseth Peramuna,  
No.185, Dewala Road,  
Thalangama South,  
Baththaramulla.
7. Lakshman Nipunaarachchi  
General Secretary,  
Jathika Janabalawegaya  
No.464/20, Pannipitiya Road,  
Pelawaththa,  
Baththaramulla.
8. A.S.M. Perera  
General Secretary,  
Jathika Janatha Pakshaya,  
No.428/5, Sunethradevi Road,  
Pepiliyana,  
Nugegoda.
9. A.H. Stefan  
General Secretary,  
Jathika Sanwardhana Peramuna,  
C, 35, Augusta Hill,  
Peradeniya.

**10. Sarath Manamendra**

General Secretary,

Nawa Sihala Urumaya,

No.75/5/B, U.L.L. Perera Mawatha,

Kurudhuwaththa,

Thudella, Ja-Ela.

**11. Kumar Gunarathnam**

General Secretary,

Peratugami Samajawadhee Pakshaya,

No.553/B/2, Gemunu Mawatha,

Udumulla Road,

Baththaramulla.

**12. Ariyawansa Dissanayake**

General Secretary,

Prajathanthrawadhee Eksath Jathika Pakshaya,

No.47/A, 1<sup>st</sup> Lane,

Rawathawaththa,

Moratuwa.

**13. Kamal Nissanka**

General Secretary,

Liberal Party,

No.5A, Kirimandala Mawatha,

Narahenpita.

Colombo 5.

**14. Sagara Kariyawasam**

General Secretary,

Sri Lanka Podujana Peramuna,

No.8/II, Robert Alwis Mawatha,

Boralesgamuwa.

15. Mahinda Dewage  
General Secretary,  
Sri Lankawe Samajawadhee Pakshaya,  
No.2/69, Melfet Gardens,  
Gemunupura, Kothalawala,  
Kaduwela.

16. Ranjith Madduma Bandara  
General Secretary,  
Samagi Jana Balawegaya  
No.347/A, Kotte Road,  
Mirihana,  
Nugegoda.

17. Wije Dias  
General Secretary,  
Samajawadhee Samanatha Pakshaya,  
No.716/1/1, Kotte Road,  
Ethulkotte,  
Kotte.

18. Jayantha Liyanage  
General Secretary,  
Sihaladheepa Jathika Peramuna,  
No.14/5, A, Dharmapala Mawatha,  
Polaththapitiya,  
Kurunegala.

19. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

#### RESPONDENTS

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C.A. (WRIT) 88/2020

1. Ven. Weadinigama Wimalatissa Thero  
General Secretary,  
Ape Janabala Pakshaya,  
Reswehera Wellawa Temple,  
No.17, Asgiriya,  
Kandy.
2. Saparamadu Kotuwagamage Chaminda Jayawardhana  
No.215/1 A, Nelum Place,  
Kalupaluwawa,  
Rajagiriya.
3. Ven. Debokkawe Chandarathana Thero  
No.96, Sri Kshethrarama Purana Viharaya,  
Puwakwaththa,  
Mal Duuwa.
4. Kurudugaha Wadeegedara Sarath Dharmarathne  
No.4/20, Wegama,  
Bibila.
5. Dissanayake Mudiyanselage Dilusha Krishantha  
No.205/2, Nelum Place,  
Kalupaluwawa,  
Rajagiriya.
6. Jayasundara Mudiyanselage Jagath Nishantha  
No.18, Industrial Zone,

Buththala.

7. Wanasinghe Arachchilage Chaminda Wanasinghe  
No.313/1 B, Bopeththa Road,  
Gothatuwa,  
Angoda.
8. Nammuni Arachchilage Ranjith  
Kiriyaketiya, Karametiya,  
Kirama.
9. Ven. Raththanadeniye Jinarathana Thero  
Sri Sudharamananda Maha Piriwena,  
Gallamba, Badalkumbura.
10. Kankanamgama Athge Kasun Buddhika  
Prashantha  
Aluthgoda, Boraluwala Yaya,  
Thanamalwila.

**PETITIONERS**

-Vs-

1. Gunadasa Samarasinghe  
Returning Officer,  
Moneragala Electoral District,  
Elections Office-Moneragala.
2. Indika Gayan Pathirana  
Assistant Returning Officer,  
Moneragala Electoral District,  
Deputy Commissioner of Elections,  
Elections Office-Moneragala.

3. Akila Viraj Kariyawasam  
General Secretary,  
United National Party,  
“Sirikotha”,  
No. 400, Kotte Road,  
Pitakotte.

4. Keerthi Kariyawasam  
Eksath Jathika Waamanshika Peramuna,  
General Secretary,  
No.1003-1/I,  
Sri Jayawardhanapura Road,  
Rajagiriya.

5. Ven. Baththaramulle Seelarathna Thero  
General Secretary,  
Janaseth Peramuna,  
No.185, Dewala Road,  
Thalangama South,  
Baththaramulla.

6. Lakshman Nipunaarachchi  
General Secretary,  
Jathika Janabalawegaya  
No.464/20, Pannipitiya Road,  
Pelawaththa,  
Baththaramulla.

7. Kumar Gunarathnam  
General Secretary,  
Peratugami Samajawadhee Pakshaya,  
No.553/B/2, Gemunu Mawatha,  
Udumulla Road,

Baththaramulla.

8. Kamal Nissanka

General Secretary,

Liberal Party,

No.5A, Kirimandala Mawatha,

Narahenpita.

Colombo 5.

9. P.D.K.K.P. Liyanage

General Secretary,

Sri Lanka Labour Party,

No.7, Summer Place,

Colombo 7.

10. Sagara Kariyawasam

General Secretary,

Sri Lanka Podujana Peramuna,

No.8/11, Robert Alwis Mawatha,

Boralesgamuwa.

11. Mahinda Dewage

General Secretary,

Sri Lankawe Samajawadhee Pakshaya,

No.2/69, Melfet Gardens,

Gemunupura, Kothalawala,

Kaduwela.

12. Ranjith Madduma Bandara

General Secretary,

Samagi Jana Balawegaya

No.347/A, Kotte Road,

Mirihana,

Nugegoda.

**13. Hon. Attorney General**

Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

In the matter of an application for *Wrts of Certiorari* and/or *Mandamus* and/or *Prohibition* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (WRIT) 89/2020

- 1. Ven. Weadinigama Wimalatissa Thero**  
General Secretary,  
Ape Janabala Pakshaya,  
Reswehera Wellawa Temple,  
No.17, Asgiriya,  
Kandy.
- 2. Hewamannage Sobath Udayanga Wijayaratne**  
No.295 B2, Heenatiyangala Road,  
Nagoda,  
Kaluthara.
- 3. Ven. Gonagala Samidhdhi Thero**  
Sri Pangnanandarama Ihala Kandhe Viharaya,  
Yageerala.
- 4. Juwan de Silva Kankanamge Thilak**  
Pushpakumara de Silva  
“Deepani”, Kaluwamodara,  
Aluthgama.
- 5. Kadirapullige Chaminda Pathmakumara**  
No.20/B, Kopiyawaththa,  
Delduuwa,

Wadduwa.

6. DampageRanuka Sanjeewa Fernando  
No.204/2, 4<sup>th</sup> Lane,  
Rathnagiriwaththa,  
Hirana, Panadura.
7. Kohilamulla Arachchige Nishantha  
No.68, “Sarasi”,  
Madhya Gedara Road,  
Mathugama.
8. Payagalage Jagath Jeewan Perera  
No.232 A, Udhupiyallewa,  
Paragasthota.
9. Ven. Therunnansegama Kosala Thero  
Buddhist Centre,  
Anagarika Dharmapala Mawatha,  
Dehiwala.
10. Hettiarachchilage Madhubashana Prabhath  
Ranasinghe  
No.117A4, Millagahawaththa,  
Owitigama, Pugoda.
11. Kolonne Appuhamilage Gunawipul Nishantha  
Kolonne  
No.65 C, Kommala,  
Benthota.
12. Chaminda Wickramarachchi  
“Sumana”, Raiygamthuduwa,  
Bandaragama.
13. Jamuni KamanthaThushara  
No.67, “Nandana”,  
Eluwila, Panadura.

**14. Amugoda Arachchige Sohan Ayesh**

No.9/20, Galpoththa Road,

Moratumulla, Moratuwa

**PETITIONERS**

-Vs-

**1. U.D.C. Jayalal**

Returning Officer,

Kaluthara Electoral District,

Elections Office-Kaluthara.

**2. Kalindra Jayaweera Fernando**

Assistant Returning Officer,

Kaluthara Electoral District,

Deputy Commissioner of Elections,

Elections Office-Kaluthara.

**3. Akila Viraj Kariyawasam**

General Secretary,

United National Party,

“Sirikotha”,

No. 400, Kotte Road,

Pitakotte.

**4. Sirithunga Jayasuriya**

General Secretary,

Eksath Samajawadhee Pakshaya,

No.53/6, E.D. Dabare Mawatha,

Narahenpita,

Colombo 5.

5. Lakshman Nipunaarachchi  
General Secretary,  
Jathika Janabalawegaya  
No.464/20, Pannipitiya Road,  
Pelawaththa,  
Baththaramulla.
6. A.H. Stefan  
General Secretary,  
Jathika Sanwardhana Peramuna,  
C, 35, Augusta Hill,  
Peradeniya.
7. Kumar Gunarathnam  
General Secretary,  
Peratugami Samajawadhee Pakshaya,  
No.553/B/2, Gemunu Mawatha,  
Udumulla Road,  
Baththaramulla.
8. Ariyawansa Dissanayake  
General Secretary,  
Prajathanthrawadhee Eksath Jathika Pakshaya,  
No.47/A, 1<sup>st</sup> Lane,  
Rawathawaththa,  
Moratuwa.
9. Dayasiri Jayasekara  
General Secretary,  
Sri Lanka Freedom Party,  
No.301, T.B. Jayah Mawatha,  
Colombo 10.

10. Sagara Kariyawasam  
General Secretary,  
Sri Lanka Podujana Peramuna,  
No.8/11, Robert Alwis Mawatha,  
Boralesgamuwa.

11. Mahinda Dewage  
General Secretary,  
Sri Lankawe Samajawadhee Pakshaya,  
No.2/69, Melfet Gardens,  
Gemunupura, Kothalawala,  
Kaduwela.

12. Ranjith Madduma Bandara  
General Secretary,  
Samagi Jana Balawegaya  
No.347/A, Kotte Road,  
Mirihana,  
Nugegoda.

13. Jayantha Liyanage  
General Secretary,  
Sihaladheepa Jathika Peramuna,  
No.14/5 A, Dharmapala Mawatha,  
Polaththapitiya,  
Kurunegala.

14. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

#### RESPONDENTS

BEFORE	:	A.H.M.D. Nawaz, J. (P/CA) and Sobhitha Rajakaruna, J.
COUNSEL	:	<p><b>C.A. (Writ) 86/2020</b> - Romesh De Silva, PC with Thishya Weragoda, N. Anketell and Pulasthi Rupasinghe for the Petitioners.</p> <p>Sanjeeva Jayawardena, PC with Naveen Marapana PC, Rukshan Senadheera, Dr. Milhan Mohamed and M. Dissanayaka for the 11<sup>th</sup> Respondent.</p> <p>Viveka Siriwardena, DSG for the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents and AG</p>
		<p><b>C.A. (Writ) 87/2020</b> - Thishya Weragoda with Pulasthi Rupasinghe for the Petitioners.</p> <p>Sanjeeva Jayawardena, PC with Naveen Marapana, PC, Rukshan Senadheera, Dr. Milhan Mohamed and M. Dissanayaka for the 14<sup>th</sup> Respondent.</p> <p>Viveka Siriwardena, DSG for the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents and AG.</p>
		<p><b>C.A. (Writ) 88/2020</b> - Thishya Weragoda with Pulasthi Rupasinghe for the Petitioners.</p> <p>Sanjeeva Jayawardena, PC with Naveen Marapana, PC, Rukshan Senadheera, Dr. Milhan Mohamed and M. Dissanayaka for the 10<sup>th</sup> Respondent.</p> <p>Viveka Siriwardena, DSG for the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents and AG.</p>
		<p><b>C.A. (Writ) 89/2020</b> - Thishya Weragoda with Pulasthi Rupasinghe for the Petitioners.</p>

Sanjeewa Jayawardena, PC with Naveen Marapana, PC, Rukshan Senadheera, Dr. Milhan Mohamed and M. Dissanayaka for the 10<sup>th</sup> Respondent.

Sanjeewa Jayawardena, PC with Rukshan Senadheera, Dr. Milhan Mohamed and M. Dissanayaka for the 9<sup>th</sup> and the 10<sup>th</sup> Respondents.

Viveka Siriwardena, DSG for the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents and AG

Argued on : 17.06.2020

Decided on : 22.06.2020

#### A.H.M.D. NAWAZ, J. (P/CA)

There are 4 applications for judicial review out of which three namely CA Writ 86/20, CA Writ 87/20 and CA Writ 88/20 raise an identical issue.

The quintessential question that arises in these three applications is whether an oath or affirmation that has to be taken or subscribed by a prospective candidate at the Parliamentary Elections has to be administered by a person competent to administer such oath or affirmation in terms of Section 15(2) of the Parliamentary Elections Act, No 1 of 1981 (hereinafter sometimes referred to as the “Parliamentary Elections Act” or “the Act”). This pivotal question can be posed in a number of ways. Is there a legal requirement that the oath or affirmation as prescribed by Section 15(2) of the Parliamentary Elections Act has to be taken before a person who is empowered to administer such oath or affirmation? Is a self-administered oath or affirmation sufficient for this purpose? Can a prospective candidate take or subscribe such oath or affirmation on his own for purposes of Section 15(2) of the Act? Can he take the oath or subscribe the affirmation in isolation and just sign below the oath?

The fourth application CA Writ 89/20 which pertains to the electoral district of *Kalutara* raises a slightly different issue. Upon a perusal of a true copy of the nomination paper submitted by the party to contest the Parliamentary Elections in the *Kalutara* District, it is quite clear that the identity of the Justice of the Peace (JP) who has sought to attest the nomination paper cannot be deciphered with certainty. Only a signature of an unidentified JP remains on the nomination paper with no seal being endorsed thereon. This nomination paper has been rejected under Section 19(1)(e) of the Parliamentary Elections Act for non-compliance with Section 15(3) of the said Act.

I must state at the outset that I propose to dispose of these two issues in one judgment. As I said, the first issue is whether a Commissioner for Oaths must administer the oath or affirmation of a prospective candidate. Is the administration of oath necessitated by Section 15(2) of the Parliamentary Elections Act? This issue arises in CA Writ 86/20 (Electoral District of *Kurunegala*), CA Writ 87/20 (Electoral District of *Colombo*) and CA Writ 88/20 (Electoral District of *Moneragala*).

The second issue which pertains to attestation of the signature of the secretary of the relevant party by an unidentified person arises in respect of the nomination paper submitted in the Electoral District of *Kalutara* (CA Writ 89/20).

I shall first deal with the first issue which is the common denominator in respect of the nomination papers submitted for the Electoral Districts of *Kurunegala*, *Colombo* and *Moneragala* (hereinafter sometimes referred to as *Kurunegala*, *Colombo* and *Moneragala*). The judgment will treat the facts surrounding the nomination paper submitted for the District of *Kurunegala* as the template in order to deal with the identical issue that arises in the other two applications pertaining to *Colombo* and *Moneragala*. Both the learned President's Counsel Messrs. Romesh de Silva, PC and Sanjeeva Jayawardena, PC along with the learned DSG Viveka Siriwardena dealt with the nomination paper submitted for *Kurunegala* in order to elucidate their arguments on the commonality of the core issue. Mr. Thishya Weragoda who marked his appearance for the Petitioners in CA Writ 87/20 and CA Writ 88/20 submitted that the three applications (CA 86/20, CA 87/20 and CA

88/20) raise the same issue and associated himself with the contention of Mr. Romesh de Silva, PC who appeared in CA 86/20.

#### **CA 86/20 (Kurunegala), CA 87/20 (Colombo) and CA 88/20 (Moneragala)**

The import of the letter dated 23<sup>rd</sup> March 2020 addressed by the returning officer of the Election Office, Kurunegala District, to the 1<sup>st</sup> Petitioner in CA (Writ) 86/2020 is to the effect that the absence of the signature of the Commissioner for Oaths who should have administered the oath or affirmation to the prospective candidates, from the nomination paper, would amount to a non-compliance with Section 15(2) of the Parliamentary Elections Act and thus the nomination paper is liable to be rejected in terms of Section 19(1)(d) of the Parliamentary Election Act. In a nutshell the rejection by the Returning Officer is on the ground that no signature of the Commissioner for Oaths appears below the signatures of three candidates in the Oaths or Affirmation part of the nomination paper. As I said before, this feature is the common denominator in the other two nomination papers submitted for *Colombo* and *Moneragala*. No Commissioner for Oaths or someone competent to administer oath or affirmation has endorsed his signature to establish the fact that the prospective candidates did take the oath or subscribe the affirmation before him. A seal of an Attorney-at-Law and Commissioner for Oaths appears *though* at the bottom of the page containing the purported oath of the three candidates for *Kurunegala*.

In that backdrop the application for judicial review [CA Writ 86/2020] seeks a Writ of Certiorari to quash “*the purported decision*” of the 1<sup>st</sup> Respondent Returning Officer dated 23<sup>rd</sup> March 2020 in addition to a Writ of Mandamus that has been sought to compel the Returning Officer of the Kurunegala Electoral District, to accept the nomination paper submitted by the recognized political party of the Petitioners namely “*Ape Janabala Pakshaya*”. The other two applications (CA 87/20 and CA 88/20) seek identical remedies thus seeking the rejected nomination papers to be accepted for *Colombo* and *Moneragala*.

In order to obtain the substantive relief of *certiorari* and *mandamus* in the main, the Petitioners seek notice and an interim order suspending the decision to reject the nomination paper.

The learned President's Counsel for the Petitioners has strenuously contended that though the signature of the Commissioner for Oaths is missing in the oath or affirmation part, the presence of the signatures of the candidates just below the format or content of the Sixth Amendment oath or affirmation in the nomination paper shows that they have taken or subscribed the oath or affirmation and this is sufficient compliance with Section 15(2) of the Parliamentary Election Act. It was a proper and compliant nomination paper notwithstanding the absence of the signatures of the Commissioner for Oath in the oath or affirmation part of the nomination paper. The act of signing below the oath or affirmation in the nomination paper amounts to a complying oath-so argued Mr. Romesh de Silva, PC.

The standard form of nomination paper given to a recognized political party or an independent group for the purpose of submitting their nomination paper requires the signature of the Commissioner for Oaths before whom the candidates would take the oath or subscribe their affirmation-see the Oaths and Affirmation component of a standard nomination paper. If the signature of the Commissioner for Oaths or anyone competent to administer the oath or affirmation appears with the notation that the respective candidate took his oath or subscribed his affirmation before him, it is definitely proof enough that such an oath or affirmation did take place before the Commissioner for Oaths or anyone who was empowered to administer the oath or affirmation. But Mr. Romesh de Silva the learned President's Counsel for the Petitioners argued that such a requirement of an oath before a Commissioner for Oaths is not imposed by the Parliamentary Elections Act or the Constitution for the purpose of contesting an election.

This contention was resisted by the learned Deputy Solicitor General Ms. Viveka Siriwardena who appeared for the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents and the Attorney-General. Mr. Sanjeeva Jayawardena, the learned President's Counsel for the 11<sup>th</sup> Respondent, the

General Secretary of Sri Lanka Podujana Peramuna, whilst associating himself with the contention of the learned Deputy Solicitor General advanced the argument that the oath or affirmation which is a constitutional oath introduced by the Sixth Amendment to the Constitution carries with it a guarantee that the candidate for election has sworn to or affirmed the sovereignty of the nation and as such Section 15(2) of the Parliamentary Elections Act mandates this oath to be taken or subscribed by the candidate before a Commissioner for Oaths who is competent to administer any such oath or affirmation.

### Preliminary Objections

In addition to these arguments on the merits, both the learned Deputy Solicitor-General and Mr. Sanjeeva Jayawardena, PC raised preliminary objections as to the maintainability of this application namely necessary parties have not been impleaded and further in the words of the learned Deputy Solicitor General this Court stands denuded of jurisdiction on the very perennial bar to jurisdiction that is oftentimes raised before us viz there is no **decision or determination** that is amenable to supervisory jurisdiction. The letter dated 23<sup>rd</sup> March 2020 rejecting the nomination paper is not a decision or determination that attracts a quashing order (a writ of certiorari)-so ran the underlying tenor of the argument.

Thus these applications for judicial review engages the interpretation of Section 15(2) of the Parliamentary Election Act and the maintainability of these applications. Does Section 15(2) carry with it a mandatory requirement that the oath or affirmation of a prospective candidate at the Parliamentary Elections must be taken or subscribed before a Commissioner for Oaths who is competent to administer such oath or affirmation? Did the 1<sup>st</sup> Respondent Returning Officer get it right when he rejected the nomination paper on the ground that the signature of the Commissioner for Oaths was missing just after the signatures of the candidates? It is axiomatic that if the Commissioner for Oaths has placed his signature in the oath or affirmation part of the nomination paper, that would establish that the candidates took their oath or affirmation in his presence. This was the contention of the Deputy Solicitor General and Mr. Sanjeeva Jayawardene, PC in

contradistinction to Mr. Romesh de Silva, PC who asserted that there is no such requirement of an administration of oath or affirmation by a Commissioner for Oaths mandatorily prescribed by Section 15(2) to be taken or subscribed by a prospective candidate. A self-oath or affirmation is compliant with Section 15(2) of the Parliamentary Elections Act and it suffices if the candidate signs below the declaration of oath which is pre-printed in the nomination paper...so submitted the learned President's Counsel for the Petitioners. The learned President's Counsel also raised an alternative argument. If this Court were to hold against him on the question of the Commissioner for Oaths having to administer an oath or affirmation, there was yet compliance with Section 15(2) since the seal of the Commissioner for Oaths appearing in the oath/affirmation part of the nomination paper would constitute substantial compliance with Section 15(2).

It is as plain as a pikestaff that if administration of oath or affirmation by a Commissioner for Oaths is a concomitant requirement of Section 15(2) of the Parliamentary Election Act, the evidence as to absence of administration of such oath or affirmation from the nomination paper should entail a rejection of the nomination paper in terms of Section 19(1)(d) of the said Act. Do the words "oath or affirmation" include an administration of such oath or affirmation? This is the question for resolution by this Court.

The *ultra vires* ground that Mr. Romesh de Silva, PC mounted in regard to the rejection of the nomination papers by the Returning Officer flowed from his argument of the inessentiality of the requirement of the Commissioner for Oaths having to attest to his administration of such oath or affirmation. The learned President's Counsel contended that upon a perusal of Section 15(2) there is no such requirement of an administration of oath or affirmation. Implicit in the argument is the assertion that the Returning Officer acted *ultra vires* in insisting on such a requirement. The illegality argument of the learned President's Counsel was run on these lines. As it turns out in all illegality arguments, the notion of illegality involves an interpretation of a statutory power conferred on a repository of such power.

Is administration of oath or affirmation an essential part of Section 15(2)? This is the core question that requires interpretation.

I have set out the rival arguments on the legal issue that surfaces to the fore in the three allied applications but before I proceed to assay them and arrive at a decision, let me indulge in a brief narrative surrounding the facts and circumstances of the case in CA writ 86/2020 which was adumbrated upon by all Counsel for clarity.

Admittedly the Electoral District of Kurunegala is the third largest Electoral District which would return 15 members to the Parliament of the Republic. Section 15(1) of the Parliamentary Elections Act, No 1 of 1981 states:-

*“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 an election of Members of Parliament for any electoral district, submit one nomination paper setting out the names of such number of candidates as is equivalent to the number of Members to be elected for that electoral district, increased by three. Such nomination paper can be substantially in Form A set out in the First Schedule to this Act.”*

Of the 13 recognized political parties that submitted their nominations for the electoral district of Kurunegala, only 12 nominations were accepted and one nomination paper was rejected. Of the 12 Independent Groups that submitted their nomination papers, 10 nomination papers were accepted and 2 were rejected. The Petitioners belong to a Recognized Political Party known as “Ape Janabala Pakshaya” and out of the group of nomination papers submitted by recognized Political Parties, it is only the nomination paper of the Petitioners that was rejected by the Returning Officer. The 1<sup>st</sup> Petitioner is the Secretary of the party, whilst the 2<sup>nd</sup> to 19<sup>th</sup> Petitioners were the candidates whose names appeared on the nomination paper.

The impugned letter of rejection dated 23<sup>rd</sup> March 2020 attributes the rejection of the nomination paper to non-compliance of the nomination paper with Section 15(2) of the Act which eventuates in that rejection in terms of Section 19(1)(d) of the Act. These two provisions need to be juxtaposed.

## Section 15(2)

*The written consent of each candidate to be nominated by recognized political party or an independent group and the board and all or affirmation, as the case may be, in the Form set out in the Seventh Schedule to the Constitution, taken or subscribed or made or subscribed, as the case may be, by every such candidate, shall be endorsed on the nomination paper.*

## Section 19(1)(d)

*The returning officer shall, immediately after the expiry of the nomination period, examine the nomination paper received by him and reject any nomination paper-*

*(d) where the consent of one or more candidates nominated or the oath or affirmation, in the form set out in the Seventh Schedule to the Constitution, of one or more candidates, has or have not been endorsed on the nomination paper; or.....*

Reduced to its bare essentials, Section 15(2) mandates two component elements to be endorsed on a nomination paper.

1. The written consent of each candidate
2. An oath or affirmation, taken or subscribed or made or subscribed, as the case may be, by every candidate,

The question before Court is whether the oath or affirmation in the form set out in the Seventh Schedule to the Constitution (the Sixth Amendment Oath) must be taken or subscribed by every candidate before a Commissioner for Oaths. Mr. Romesh de Silva, PC contended that since Section 15(2) does not use the words “before a Commissioner for Oaths”, the oath or affirmation need not be administered by a person competent to administer such oaths or affirmations. The nub of the argument of Mr. Romesh de Silva, PC is that a candidate can take this oath on his own and place his signature below the oath, which would be sufficient compliance with Section 15(2) of the Act. The learned President’s Counsel contrasted Section 15(2) with Section 15(3) and contended that while it is a requirement in Section 15(3) that each nomination paper shall be attested by

a Justice of the Peace or by a Notary Public, there is no such requirement in Section 15(2) for an oath or affirmation to be administered.

The relevant oath or affirmation which was introduced by the Sixth Amendment to the Constitution is in the Seventh Schedule to the Constitution and reads as follows:-

SEVENTH SCHEDULE  
ARTICLE 157A AND ARTICLE 161(d) (iii)

“I.....do solemnly declare and affirm  
swear

that I will uphold and defend the Constitution of the Democratic Socialist Republic of Sri Lanka and that I will not, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka.”

This oath has been pre-printed in the standard nomination paper and 18 candidates (if one takes the nomination paper for Kurunegala) have placed their signatures just below the format of the oaths and out of the 18 candidates who were on the nomination paper, the Commissioner for Oaths has placed his signature for 15 candidates and this is evidence that these 15 candidates took the oath or subscribed their affirmation before him. It is notable that he has placed his signature for 15 candidates **but not for 3 candidates**. Thus the evidence is that 15 candidates took their oaths or subscribed their affirmations before him but not the 3 candidates. This is the documentary evidence made available to this Court by the learned Deputy Solicitor General. It is this error (non-administration of oaths for three candidates) that has led to the rejection of the nomination paper. In passing I must add that the Commissioner for Oath takes a diametrically opposite stance to this documentary evidence when he states in his affidavit before this Court that all 18 candidates took their oaths before him but **due to**

*an inadvertence he may not have placed his signature before the names of the three candidates* (emphasis added). This stance contradicts the documentary evidence (the nomination paper) and this belated explanation does not sound credible enough for reliance and I will turn to this affidavit later in the judgment.

The reason for rejection of the nomination paper submitted for Kurunegala is that the Commissioner for Oaths has not signed for the three candidates signifying the administration of the oath, whilst he has affixed his signature for 15 candidates. According to Section 19(1)(d) of the Parliamentary Elections Act, the trigger for rejection of a nomination paper is the non-endorsement of the oath or affirmation of one or more candidates who stands nominated. Thus a defect in the oath or affirmation of one candidate is sufficient to vitiate the whole nomination paper.

So what are the formalities for taking an oath or subscribing an affirmation that is mandated by Section 15(2)? How does an oath or affirmation fail the formality prescribed for an oath or affirmation within Section 15(2)?

Is the administration of oath or affirmation a component part of Section 15(2) though it is not specifically mentioned in so many words in the Section? Mr. Romesh de Silva, PC cited the case of *Susil Premajayantha and Lalith U. Gamage v. Dayananda Dissanayake and two others* (CA 84/2011, CA 78/2011, CA 110/2011 & CA 133/2011) wherein Sathya Hettige P.C J/PCA took the view (with Upaly Abeyrathne J. concurring) in the Court of Appeal that in regard to Section 31(1)(d) of the Local Authorities Ordinance, the rejection of a nomination paper by the Returning Officer, Akmeemana Pradeshiya Sabha on the ground of the absence of an attestation of the Justice of the Peace is not a ground of rejection.

The Court of Appeal in the case considered Section 31(1)(d) of the Local Authorities Elections Ordinance which goes as follows:-

*“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
- (c) in respect of which the deposit required under Section 29 has not been made; or
- (d) where the consent of one or more candidates nominated has or have not been endorsed on the nomination paper or where the oath or affirmation in the form set out in the Seventh Schedule to the Constitution of one or more candidates has or have not been annexed to the nomination paper; or”

The Court of Appeal interpreting the above provision took the view that the words *the oath or affirmation in the form set out in the Seventh Schedule to the Constitution of one or more candidates....*in Section 31(1)(d) of the Local Authorities Elections Ordinance do not impose the interposition of a Commissioner for Oaths. With much respect to the bench which made this pronouncement, I am afraid that I would disagree having regard to the following considerations which that Court did not take into cognizance in arriving at that decision.

The interpretation of Section 15(2) that necessitates the oath or affirmation of the candidate to be endorsed on the nomination paper has to take into account necessarily the words “*oath or affirmation*” in the section. Can a candidate take this oath in isolation and sign it himself? Does it become an oath or affirmation when he takes or subscribes it in isolation quite independently of a Commissioner for Oaths? I think not. Methinks the interposition of a Commissioner for Oaths is mandatory.

First, what is an oath? It has been differently described. In its ordinary sense, an oath is a “form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully.” It is “a pledge by the person taking it that his attestation or promise is made under an immediate sense of responsibility to God.” Similarly, an affirmation in lieu of oath binds a person to live by what he undertakes. An oath of allegiance or loyalty means that a person “promises and binds himself to bear true allegiance to a particular sovereign or Government and to support its Constitution.....” An oath or affirmation has been differently described.

Black's Law Dictionary (11<sup>th</sup> Edition Bryan A. Garner at p.1289) defines an oath to be a solemn declaration, accompanied by a swearing to God or a revered person or thing, that one's statement is true or that one will be bound to a promise.

This definition brings out the solemnity of an oath and imports an external agency to whom the solemn declaration must be sworn. An affirmation is defined by Black's Law Dictionary as a solemn pledge equivalent to an oath but without reference to a supreme being or to swearing. Both attract the penalty of forgery if the oath or affirmation turns out to be untrue. There must be a witness to an oath or affirmation who could speak to it having been made. Otherwise one can disavow a sacred oath and yet claim that he took the oath. One can deny sovereignty of a state and claim that he owes allegiance. He cannot just sign below the format of the oath and claim that he took the oath. An oath or affirmation by their intrinsic nature presupposes the oral declaration of the oath or affirmation and signing it to signify its taking or subscribing. It cannot be taken in secrecy. Thus there cannot be a self-pledge. It goes without saying that an oath or affirmation as solemn as a pledge or promise has to be administered.

Bryan Garner makes it crystal clear in Black's Law Dictionary at p.73 -“while an oath is “sworn to,” an affirmation is merely “affirmed”, but either type of pledge may subject the person making it to the penalties for perjury. How can then one say that he can take the oath or subscribe the affirmation in isolation when there has to be a witness to speak to his oath or affirmation?

So I conclude that Section 15(2) of the Parliamentary Elections Act does not permit an oath or affirmation to be effected in isolation but before a person competent to administer the oath or affirmation.

I am also fortified in this interpretation having regard to overseas jurisprudence.

In *American Jurisprudence* (2<sup>nd</sup> Edition), it has been stated as under:-

“In its broadest sense, an oath is any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully. It involves the idea of calling in God to witness what is averred as truth, and it is

supposed to be accompanied with an invocation of His vengeance, or a renunciation of His favour, in the event of falsehood. The word "oath" has been construed to include "affirmation" in cases where, by law, an affirmation may be substituted for an oath..... It has been said that an oath is a solemn adjuration to God to punish the affiant if he swears falsely. The sanction of the oath is a belief that the Supreme Being will punish falsehood, and whether that punishment is administered by remorse of conscience, or in any other mode in this world, or is reserved for the future state of being, cannot affect that question, for the sum of the matter is a belief that God is the avenger of falsehood."

Similarly, in "*Corpus Juris Secundum*":-

"An oath is an appeal by a person to God to witness the truth of what he declares and an imprecation of divine punishment or vengeance on him if what he says is false. Its purpose is to secure the truth. In its broadest sense, an oath includes any form of attestation by which a party signifies that he is bound in conscience to perform an act faithfully and truthfully, but it does not include those forms of attestation, which were not accompanied by an imprecation. It is sometimes defined as *an outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God.*"

An outward pledge cannot be taken in secrecy nor could it be taken in isolation. Thus Parliament in enacting Section 15(2) could not have intended the oath or affirmation to be a self-executed pledge or promise.

In England, various officers of State have to take the oath of allegiance and the official oath on assuming office. The Lord Chancellor is one of them. The oath of allegiance alone has to be taken by members of both Houses of Parliament on taking their seats, and by certain other persons on entering, office or acquiring a special status.

In India, the Constitution makes it obligatory for the holders of offices of responsibility to subscribe to the oath as prescribed. It provides for the administration of oath and lays down the form of oath or affirmation for persons holding various Constitutional Offices.

In relation to a similar oath stipulated in Article 173 (a), Schedule 3, Form 3 of the Indian Constitution, the Indian Supreme Court opined in *V. Sutaria v. N.P. Bhavadia* AIR 1970 SC 765 at 767 that the real purpose of the oath is that the person concerned must give an undertaking to bear true faith and allegiance to the Constitution and uphold the sovereignty and integrity of India. Similarly as in Sri Lanka, in the case of political offices, even those seeking election to the Indian Parliament and State Legislatures have to subscribe to the oath or make an affirmation in the prescribed form at the time of filing the nomination paper. The forms of oath have been prescribed for the President, the Prime Minister, the Chief Justice of India, the Controller and Auditor General, the Members of Legislatures and the Judges etc. The obvious purpose is to ensure that the person concerned makes a commitment to live by the constitutional process.

In Sri Lanka the Constitutional Oath introduced by the Sixth Amendment is peremptorily made mandatory for not only those aspiring to be representatives of the people but several other office holders. The mandate of the oath is spelt out in Article 157A of the Constitution whilst its format is given in the Seventh Schedule. Article 157A (8)(a) and (b) render the Seventh Schedule oath or affirmation mandatory not only for Members of Parliament but also for those nominated as a Member of Parliament. So when the mandate of Section 15(2) of the Parliamentary Elections Act declares that every candidate must take the Seventh Schedule oath or subscribe to an affirmation and have it endorsed on the nomination paper, he must demonstrate his allegiance to the Constitution by scrupulously abiding by the form and mode of taking the oath.

The prospective candidate has to manifest in the nomination paper that he would uphold the sovereignty and integrity of the country. A mere signature below the oath would not suffice. Article 157A(3) prescribes severe penalties for any person who acts in contravention of the oath. It is to ensure the punctilious observance of a higher duty that the Constitution lays down the oath. It is not a mere belief. If strict compliance is not insisted upon, there would be no end to modifications or variations.

Undoubtedly the Seventh Schedule contains only the form of words. But it does not prescribe the mode of taking oath or subscribing the affirmation. It goes without saying

that one has to look to an existing law for the mode and formalities of taking the Seventh Schedule oath or subscribing the affirmation thereof.

### **Oaths and Affirmations Ordinance -the existing law**

The mode of taking the oath or subscribing to the affirmation has to be prescribed in an existing law and Article 170 of the Constitution defines an existing law and existing written law to mean any law and written law, respectively in force immediately before the commencement of the constitution which under the Constitution continue in force. The uniformly applicable law “Oaths and Affirmations Ordinance” No.9 of 1985 as amended declares that it is an ordinance to consolidate the law relating to oaths and affirmations in judicial proceedings and for other purposes. If the mode and formalities for taking the oath or subscribing to the affirmation are not prescribed in the Constitution and the Parliamentary Elections Act, it is to the Oaths and Affirmations Ordinance one has to look for complying with Section 15(2) of the Parliamentary Elections Act. Section 6 of the Oaths and Affirmations Ordinance states that all oaths and affirmations for any other purpose shall be administered according to such forms and with such formalities may be made by the Supreme Court and until such rules are made, according to the forms and with the formalities now in use.

So administration of an oath or affirmation is made mandatory and Section 12(2) of the Oaths and Affirmation Ordinance states that a Commissioner for Oaths may administer any oath or affirmation and any such oath or affirmation administered or taken by a Commissioner for Oaths shall in all legal proceedings and for other purposes have the same effect as an oath, affirmation, or affidavit administered or taken before a Justice of the Peace, and all enactments relating to oaths, affirmations, and affidavits administered or taken before a Justice of the Peace shall, with the necessary modifications, apply thereto:

Thus the existing law on oaths or affirmations exclude the possibility of an oath in isolation and renders it mandatory that a Commissioner for Oaths or a Justice of the Peace must administer such oath or affirmation.

The form of administration is spelt out in Section 12(3) of the Oaths and Affirmations Ordinance which states that every Commissioner before whom any oath or affirmation is administered, or before whom any affidavit is taken under this Ordinance, shall state truly in the *jurat* or attestation at what place and on what date the same was administered or taken, and shall initial all alterations, erasures and interlineations appearing on the face thereof and made before the same was so administered or taken.

Thus the Oaths and Affirmations Ordinance puts it beyond doubt that the prospective candidate must take the oath or subscribe the affirmation before a Commissioner for Oaths or a Justice of the Peace. I conclude that there must then be two signatures in addition to the declaration of the oath or affirmation before the Commissioner for Oaths. The prospective candidate must take the oath or subscribe to the affirmation and place his signature. The Commissioner for Oaths must also place his signature attesting to the administration of Oath or Affirmation. There must be strict compliance with this mandate and an oath is not complete without administration. There can be no deviation from this legal requirement which is conjointly imposed by the Constitution, Parliamentary Elections Act and the Oaths and Affirmations Ordinance.

The Parliamentary Elections Act does not take away the requirements of the Oaths and Affirmations Ordinance from its operation. It is for this reason that Section 15(2) of the Parliamentary Elections Act does not specifically refer to administration of oath or affirmation. It is otiose for the Parliamentary Elections Act to refer to the requirements of the Oaths and Affirmations Ordinance. By the very nature of the oath or affirmation, the Oaths and Affirmations Ordinance kicks in. Otherwise one can just sign below the oaths without even reading it and say that he took the oath. A constitutional oath cannot be just trifled with in such flippant observance.

That is why I observe that the previous decision of *Susil Premajayantha and Lalith U. Gamage v. Dayananda Dissanayake and two others* (CA 84/2011, CA 78/2011, CA 110/2011 & CA 133/2011) is in error as it has not considered the full import of an oath or affirmation and in any event this case cannot be transposed on Section 15(2) of the Parliamentary Elections Act.

Thus on the view that I have taken, the nomination paper that was filed by the party represented by the Petitioners does not conform to the requirements of Section 15(2) of the Parliamentary Elections Act.

Let me now turn to the affidavit filed by the Commissioner for Oaths. He asserts that all 18 candidates took their oaths before him but due to inadvertence he may not have placed his signature attesting to the oath-taking or affirmation.

We would be quite slow to accept the belated explanation of this Commissioner for Oaths. He is in fact in a state of doubt when he states that he may not have placed his signature by inadvertence. If he was inadvertent as he claims, it was open to him to go before the Returning Officer in term of Section 8(1) of the Parliamentary Elections Act and seek to correct such omission or error on the nomination paper but subject to objections. Whether the failure to have the administration of oath or affirmation endorsed on a nomination paper would amount to a curable omission is a matter for which there is no decision from the Returning Officer. In such a situation, this Court will be assuming an original jurisdiction to decide a primary fact, which does not fall within supervisory jurisdiction. In such a backdrop I would reject the belated assertion of the Commissioner for Oaths that he administered oaths and affirmations to all the candidates. This contradicts the documentary evidence and the version does not induce confidence in this Court.

Mr. Romesh de Silva, PC also argued that if this Court were to hold against him on the requirements of Section 15(2), there was substantial compliance on the part of the Petitioners as the seal of the Commissioner of Oaths is affixed on the oath or affirmation part of the nomination paper. In our view the seal of the Commissioner of Oaths cannot be a substitute for his signature.

S.N. Silva C.J in *Ediriweera v. Kapukotuwa, General Secretary, United National Party* (2003) I Sri LR 228 made short shrift of the argument on substantial compliance. In a nutshell he held that the stamp of the Secretary of the UNP found below the space provided for the Secretary's signature would not amount to his signature.

I take the view that when the conjoined requirements of the Constitution, Parliamentary Elections Act and the Oaths and Affirmations Act mandate an administration of oath or affirmation, such solemn act cannot be established by a stamp of the Commissioner for Oaths appearing so far away from the so called oaths in the nomination paper.

Having regard to the severity of sanction namely rejection of the nomination paper for non-compliance with Section 15(2), there must be strict compliance with Section 15(2) requirements for an oath or affirmation-namely, both the candidate and the Commissioner for Oaths must affix their signatures in the space provided for their signatures. Then only it becomes an oath that complies with Section 15(2). Otherwise it is liable to be rejected under Section 19(1)(d) of the Act.

### Preliminary objections

Though the above reasoning would dispose of these petitions on the merits, I would briefly refer to the preliminary objections that were raised as to the maintainability of the applications.

#### a. Necessary parties are not before Court

Not only the officer or authority to be compelled by *mandamus*, but also all persons who would be affected by the issue of *mandamus* should be made respondents to the application. Where *mandamus* was sought to compel the holding of the 2<sup>nd</sup> MBBS examination only for the petitioners and 45 other students of the Faculty of Medicine of the University of Colombo, to the exclusion of 115 students of the North Colombo Medical College, it was held that “the 115 students of the North Colombo Medical College are necessary parties and the failure to make them respondents is fatal to the petitioners’ application.”- see *Abayadeera v Dr. Stanley Wijesundera* (1983) 2 Sri.LR 267, 285-292. In all the districts there are candidates who would be contesting the elections from independent groups. In none of the applications these candidates have been made Respondents. If the nomination papers of the Petitioners were to be accepted, that would definitely affect the rights of these contestants in the independent groups and I would hold that the non-suiting of the candidates from thee independent

groups in the petitions before this Court is fatal to these applications. Therefore even on this ground these applications have to be rejected.

b) Ministerial Act

It is settled law that the Returning Officer does not make a decision when he proceeds to reject the nomination papers under Section 19 (1) of the Act. If the conditions in (a), (b), (c), (d) and (e) are satisfied, he shall reject the nomination paper-see *Vigneswaran and Stephen v Dayananda Dissanyake and Others* (2002) 3 Sri.LR 59. The Returning Officer has no discretion in the matter and he would only be performing a ministerial act.

A ministerial act may be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act done. Such an act is not susceptible to *certiorari*.

In the circumstances, I take the view that these petitions should be dismissed *in limine*, as the Petitioners have not made out a *prima facie* case for issuance of notice and interim relief.

Then the only application that remains to be considered is application bearing No CA writ 89/2020 which relates to the nomination paper submitted for the Electoral District of *Kaluthara*. As I said before, Section 15(3) requires the Secretary of a party to sign the nomination paper and it shall be attested by a Justice of the Peace or a Notary Public.

The nomination paper does not give any indication as to who attested the instrument. The Justice of the Peace is not identified with certainty as the signature of an unknown person appears thereon. Moreover, the place of attestation is not specified and in terms of Section 8 the failure to attest a nomination paper shall be deemed not to be an omission. It also attracts the peremptory sanction of rejection in terms of Section 19(1)(e) of the Act. It is on this ground that the nomination for *Kalutara* was rejected.

As such there is no *prima facie* case for notice that the Petitioners have made out in any of the applications filed before this Court (CA 86/20, 87/20, 88/20 and 89/20) and in the circumstances I proceed to dismiss these applications

PRESIDENT OF THE COURT OF APPEAL

Sobhitha Rajakaruna, J.

I agree

JUDGE OF THE COURT OF APPEAL