

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

In the matter of an application under
and in terms of Articles 17 and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

S.C. (FR) No. 15/2024

Selladurai Yesuraja,
Coombewood Estate,
Thalawakelle.

(In respect of the infringement of the
fundamental rights of his wife Rajami
Rajakumari who is now deceased)

Petitioner

Vs.

1. The Officer in Charge Welikada Police Station, Welikada.
2. Senior Deputy Inspector General of Police Western Province,
Senior Deputy Inspector General Office,
Sub floor,
Sri Lanka Police Headquarters,
Colombo 01.
3. Inspector General of Police
Police Headquarters,
Colombo 01.
4. Valimuni Dewage Anura Ajith Kumara
Sub Inspector of Police,

120/11, pliyatiyane,
Dewalapola,
Minuwangoda.

5. Basnayake Mudiyanselage Premachandra
Basnayake,
Police sergeant -25883
Kirindigalla,
Ibbagamuwa.
6. Herath Mudiyanselage Maalan
Jayawardena,
Police constable- 87918
Thuspitiyawe,
Thanthirimale,
Anuradhapura.
7. Jayasinghe Mudiyanselage Gamini
Jayasinghe,
Police sergeant -32847
D/3, Kawudulle,
Hingurathgoda.
8. Thaanemaya Gedhara Rathnayake
Mudhiyanselage Apsara Samarakoon
273, Muwagama,
Pahale para,
Rathnapura.
9. Herath Mudiyanselage Nilanka
Prasadheni Herath,
60/B, Unit 19,
Akbopura.
10. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

Before : Achala Wengappuli, J.
Menaka Wijesundera, J.
Sampath K.B. Wijeratne, J.

Counsel : Lakshan Dias with Asher Stephen, Hasini Hettiarachchi,
Ashwini instructed by Dayani Panditharathne for the
Petitioner.
Dhammadika Piyadasa instructed by D. Praveena
S. Senadheera for the Respondent.
Tenny Fernando with Anjula Bandara for the 1st
Respondent.
P.K. Prince Perera with S. Panchcharama for the 5th
Respondent.
Chamara Nanayakkarawasam instructed by Dimuthu
Fernando for the 6th & 7th Respondents.

Written

Submissions : Latest written submissions on behalf of the Petitioner on
30th September 2025.
Written submissions on behalf of the 5th Respondent
on 03rd of September 2025.
Latest written submissions on behalf of the 6th and 7th
Respondents on 29th of September 2025.

Argued on : 01.09.2025

Decided on : 12.11.2025

MENAKA WIJESUNDERA J.

The petitioner in the instant matter is namely Selladurai Yesuraja, the husband
of the deceased who had worked as a house maid in a house at Royal Court

Cooray mawatha Rajagiriya, has pleaded in his petition dated 12.09.2024 but in fact, it should be dated as 12.09.2023 and filed on 19.01.2024 that the fundamental rights of the deceased have been violated under Article 11, 12(1) of the Constitution by the 1st to the 4th respondents and has urged this Court to declare as such.

The petitioner states that on 05.11.2023, he was informed by the owners of the house in which she had been working that the deceased had been arrested and that the police were assaulting her.

When the petitioner contacted the said police, he was informed that his wife had passed away and on the previous occasion when he called the same number the person who answered abused him in filth and had given the phone to the deceased whom he says was groaning into the phone.

The petitioner alleged that the post-mortem report had said that the injuries inflicted could be due to the torture of the deceased by the police. However, he states that the lady of the house had filed a complaint of theft against the deceased and she had been taken into custody on that.

When this matter was supported for leave the Counsel appearing for the 5th, 6th, 7th and the 8th Respondents raised the objection that the instant application was time barred as per the provisions of the Constitution.

According to Article 126(1) of the Constitution an infringement of any fundamental right has to be brought to the notice of this Court within 30 days of the said violation.

In the instant matter, the violation had taken place on 11.05.2023 and the instant application had been filed on 19.01.2024. The Counsel for the petitioner argued that he had reported the matter to the Human Rights Commission on 30.05.2023, and he had marked and produced the receipt of the Human Rights Commission dated 30.05.2023 which acknowledges the receipt of his complaint.

The counsel for the respondents argued that the instant application has been filed well beyond the time limit specified in the Constitution under Article 126(2) of the Constitution. The Petitioner had lodged a complaint in the Human Rights Commission on 30.05.2023 but, has failed to produce any evidence as to whether an inquiry or investigation is pending or has been concluded. Therefore, the Counsel for the Respondents argued that in the absence of such material, the Petitioner cannot claim refuge under Section 13(1) of the Human Rights Commission Act.

Section 13(1) of the Human Rights Commission Act No. 21 of 1996 reads as follows:

“Where a complaint is made by an aggrieved party in terms of Section 14, to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, the period within which the inquiry into such complaint is pending before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126(2) of the Constitution.”

Therefore, according to the above quoted section it is quite clear that a mere act of lodging a complaint in the Human Rights Commission is not sufficient to overcome the time limit stipulated under Article 126 (2) of the Constitution. As per the above section, a period of time to be excluded to fall in line with Article 126 (2) “*the period within which the inquiry into such complaint is pending before the Commission*”.

In the case of **Jayawardena vs Attorney General FRD (1) 175**, it has been held that:

“Difficulties have been arisen in the computation of the one-month period in cases of allegations of unequal treatment. The general rule is that an application must be made to the Court within one month of the Petitioner becoming aware of the act of unequal treatment”.

In some cases, it has been held that delay in making an application through ignorance of the law cannot be excused, but for other reasons it is not necessarily fatal. This has been held in the cases of **Nalika Kumudini v OIC Hungama Police 1997 3SLR 331** by **Mark Fernando ACJ**.

It has also been held that where a Petitioner establishes that he became aware of an infringement or imminent infringement not on the very day the act complained of but subsequently on a later day, the period of one month would be computed only from the date on which such petitioner became aware of his infringement.

Apart from the above, our Courts have also discussed the principle of continuing violation of Human Rights. In such cases it has been held that in continuing violations, if a claim is made within the stipulated period counted from any act which was part of the infringement and is proved to the satisfaction of Court, the Respondent will be responsible for those acts committed during the entire period including those committed during the statutory period of limitation. Hence, what

has been applied in Sri Lanka is that if there had been a continuous violation the state would be liable for acts committed even before the one month period as laid down in Article 126.

A classic example of this principle is the case of **Sugathapala Mendis v Chandrika Kumaratunga (Water's Edge) (2008) 2 SLR 339**. In this matter the exact date was not given in the judgement but the application had been filed in 2007. The violation is supposed to have taken place before 2005. In this case, when the objection of time bar was taken up Justice Tillekawardana rejected the objection of time bar and had commented that considering the nature of the applications, the Petitioners were within the time limit as per Article 126 of the Constitution.

In the instant matter, the said fear arose when the petitioner had learned that the deceased had been arrested on 05.11.2023, on this date he had got to know that the deceased had been arrested and the police was assaulting the deceased.

The importance of considering the facts and the circumstances of the case has been very lucidly explained by Prasanna Jayawardena J in the case of **De Soysa v Dissananyake SC FR 206 2008, SCM 09.12.2016** who took a different view and had stated that,

“Duty entrusted to this Court by the Constitution to give relief and protect a person whose fundamental rights have been violated by executive and by administrative action requires 126(2) of the Constitution to be interpreted and applied in a manner which takes in to account the reality of the facts and circumstances which found the application. This Court has recognized that it would fail to fulfill its guardianship if the time limit is applied by rote and the Court remains blind to facts and circumstances which have denied a petitioner of an opportunity to invoke the jurisdiction of Courts earlier”.

Also in a recently held case, **SC/FR/244/2017 SC minute dated 22.02.2019**, her Ladyship Justice Murdu Fernando had held when the time bar objection was taken up that the rationale adopted by His Lordship Justice Prasanne Jayawardena in the above case that the Court would fail in its role if the time limit is applied by rote and the Court remains blind to the facts of the case, and went on to hold that as per section 13(1) of the Human Rights Commission act “such time will not be taken in to account in computing the period of one month within which an application may be made to this Court as per article 126(2) of the Constitution.”

The Indian Constitution has not laid down a time limit for the adjudication of fundamental rights applications but it has been held that unwarranted delays should not be recognized but no specific period can be laid down and each case should be considered according to its merits.

This has been held in the case of **Ramachandra Shankar Diodar v State of Maharashtra AIR 1974 SC 259**, it has further held that the rule that the court may not inquire into belated and stale claims is not a rule of law but a rule of practice based on the exercise of sound judicial discretion depending on the facts of each case.

Upon consideration of the above-mentioned matters and the cases cited above it has been very clearly held that the facts and circumstances of each case have to be considered with due diligence but it does not lay down a situation where the Articles in the Constitution can be overruled by a piece of legislation which has been passed by the parliament.

As such, I find that the instant application is in violation of Article 126(2) of the Constitution. Hence, I hold that the instant application has been filed out of time.

Therefore, the objection of the learned State Counsel is upheld and the instant application is dismissed.

JUDGE OF THE SUPREME COURT

Achala Wengappuli, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath K. B. Wijeratne, J.

I agree.

JUDGE OF THE SUPREME COURT