

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

In the matter of an application under
Article 126 of the Constitution read
with Article 17 of the Democratic
Socialist Republic of Sri Lanka.

I.P.D.P. Kulasuriya,
No. 53/2C, Priya Mawatha,
Makuluduwa,
Piliyandala.

Petitioner

SC FR Application No: 403/2015

Vs.

1. Air Marshal Harsha Abewickrama,
- 1A. Air Marshal Gagana Bulatsinghala,
- 1B. Air Marshal Kapila Jayampathie,
- 1C. Air Marshal Sumangala Dias,
- 1D. Air Marshal S.K. Pathirana,
- 1E. Air Marshal Udeni Rajapakshe,
Commander - Air Force,
Sri Lanka Air Force,
Air Force Head Quarters,
Colombo 02.
2. Air Commodore P.D.K.T. Jayasingha,
- 2A. Base Commander,
R.P. Liyanagamage,
Air Commodore,

Sri Lanka Air Force Rathmalana
Camp,
Rathmalana.

3. A.K.S. De Silva,
Wing Commander,
Officer-in-Charge & Procurement
Division,
Sri Lanka Air Force Rathmalana
Camp,
Rathmalana.
4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

In the matter of an application under
Article 126 of the Constitution read
with Article 17 of the Democratic
Socialist Republic of Sri Lanka.

Danushka Mihiran
Arumappemachchi,
No. 466/467, Southern Court
Manavila,
Walahanduwa,
Galle.

Petitioner

SC FR Application No: 404/2015

Vs.

1. Air Marshal Harsha Abewickrama,
 - 1A. Air Marshal Gagana Bulatsinghala,
 - 1B. Air Marshal Kapila Jayampathie,
 - 1C. Air Marshal Sumangala Dias,
 - 1D. Air Marshal S.K. Pathirana,
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Camp,
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Wing Commander,
Officer-in-Charge & Procurement
Division,
Sri Lanka Air Force Rathmalana
Camp,
Rathmalana.
4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: **Justice A.H.M.D. Nawaz**
 Justice A.L. Shiran Gooneratne
 Justice Achala Wengappuli

Counsel: Nuwan Bopage for the **Petitioner.**

Saliya Pieris, PC with Varuna de Seram instructed by
Manjula Balasuriya for the **3rd Respondent.**

Sajith Bandara, SC instructed by State Attorney for the **Hon.**
Attorney General.

Argued on: 09/07/2025

Decided on: 11/09/2025

A. L. Shiran Gooneratne J.

1. When SC/FR/403/2015 and SC/FR/404/2015 were taken up for Argument, the respective parties agreed that a single Judgment be delivered in both matters. Accordingly, SC/FR/403/2015 was taken up for consideration. At the commencement of proceedings, learned President's Counsel for the 3rd Respondent, Mr. Saliya Pieris, raised a Preliminary Objection against the maintainability of the Petition on the ground of prescription.
2. By the Amended Petition and Affidavit dated 11/12/2015 in SC/FR/403/2015, the Petitioner previously attached to the Sri Lanka Air Force, invokes the jurisdiction of this Court under Article 126 of the Constitution, alleging violations of his Fundamental Rights arising from acts of physical assault, unlawful detention, procedural injustice, and harassment at the hands of superior officers. The Petitioner seeks redress for the infringement of his rights guaranteed under Articles 11, 12(1), 12(2), and 14(1)(g), and calls upon this Court to examine the legality, proportionality,

and *bona fides* of the Respondents' actions within the framework of constitutional justice.

3. The Petitioner avers that the alleged infringement of his Fundamental Rights by the 3rd Respondent occurred on or about the 10/09/2015. However, the initial Fundamental Rights application was filed before this Court only on the 30/10/2015, which is beyond the one-month period prescribed under Article 126(2) of the Constitution. The said Petition or the subsequent Amended Petition dated 11/12/2015 does not provide any justification for the lapse in time.
4. It is a well-established principle of Constitutional Law that an application under Article 126(2) must be instituted within one month of the alleged infringement of a Fundamental Right. This requirement is not merely procedural but jurisdictional in nature.
5. Article 126(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka reads as follows;

126. (2) "Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an Attorney-at-Law on his behalf, within one month thereof, in accordance with such rules of court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement. Such application may be proceeded with only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused, as the case may be, by not less than two judges."

6. The Petitioner seeks to rely on a complaint purportedly lodged with the Human Rights Commission of Sri Lanka (HRCSL) on 01/10/2015, marked P9, in order to invoke Section 13(1) of the Human Rights Commission Act of Sri Lanka Act No. 21 of 1996 and thereby exclude such period from the

computation of time. However, the said receipt does not disclose the nature or content of the complaint, nor a copy of the complaint is filed of record. More significantly, there is no material before this Court to indicate that any inquiry was pending before the HRCSL.

7. Section 13(1) of the Human Rights Commission Act stipulates that where a complaint is made to the Commission within one month of the alleged infringement, the period during which an inquiry is pending shall be excluded from the computation of time under Article 126(2) of the Constitution.
8. Section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 reads as follows;

13. (1) "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."

9. However, the benefit of this provision is contingent upon the existence of a valid and pending inquiry. A mere assertion that a complaint was made, unsupported by any evidence of its contents or progress, is insufficient to invoke the statutory exception.
10. In the case of ***Subasinghe vs. Inspector General of Police***¹, His Lordship S. N. Silva CJ had held that;

"The Petitioner seeks to bring the complaint within the time limit on the basis that he made the complaint to the Human Rights Commission of

¹ Subasinghe v. Inspector General of Police SC Sp. 16/99 SCM 11.9.2000

Sri Lanka within the stipulated time. In this regard the petitioner relies on section 13 and 14 of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 which provides that where a complaint has been made within a period of one month to the Human Rights Commission, the period within which the inquiry into such complaint was pending before the Commission will not be taken into account in computing the period within which an application should be filled in this Court.

The Petitioner has failed to adduce any evidence that there has been an inquiry pending before Human Rights Commission. In the circumstances, we have to uphold the preliminary objection raised by learned State Counsel.”

11. The aforementioned case was referred to by His Lordship Justice Gamini Amaratunga, in the case of **Ranaweera & Others vs. Sub Inspector Wilson Siriwardena & Others**², where His Lordship held that;

“It is very clear from the section quoted above that the mere act of making a complaint to the Human Rights Commission is not sufficient to suspend the running of time relating to the time limit of one month prescribed by Article 126(2) of the Constitution. In terms of the said section 13(1), the period of time to be excluded in computing the period of one month prescribed by Article 126(2) of the Constitution is "the period within which the inquiry into such complaint is pending before the Commission."

Section 14 of the Human Rights Commission Act (in so far as it is relevant to the present purpose) reads as follows. "The Commission may... on a complaint made to it by an aggrieved person investigate an allegation of an infringement or imminent infringement of a fundamental right of any person "

² Ranaweera & Others V. Sub Inspector Wilson Siriwardena & Others [2008]1 SLR 260

Thus the Human Rights Commission is not legally obliged to hold an investigation into every complaint received by it regarding the alleged violation of a fundamental right. Therefore, a party seeking to utilize section 13(1) of the Human Rights Commission Act to contend that "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" is obliged to place material before this Court to show that an inquiry into his complaint is pending before the Human Rights Commission."

12. In ***Thilangani Kandambi vs. State Timber Corporation & Others***³, this Court identified four key principles on the application of Section 13(1) of the Act concerning Article 126(2) of the Constitution. They are as follows:

- a. *"The initial view was that mere production of a complaint made to the HRCSL within one month of the alleged infringement is sufficient to get the benefit of the provisions in section 13(1) of the HRCSL Act [Romesh Coorey v Jayalath (2008) 2 Sri.L.R. 43, Alles v. Road Passenger Services Authority of the Western Province, (S.C.F.R. 448/2009, S.C.M. 22.02.2013)]."*
- b. *However, the present position is that a petitioner must show evidence that the HRCSL has conducted an inquiry regarding the complaint or that an inquiry is pending. Simply lodging a complaint is inadequate. [Subasinghe v. Inspector General of Police, SC (Spl) 16/1999, S.C.M. 11.09.2000; Kariyawasam v. Southern Provincial Road Development Authority and 8 Others, (2007) 2 Sri.L.R. 33; Ranaweera and Others v. Sub-Inspector Wilson Siriwardene and Others (2008) 1 Sri.L.R. 260; K.H.G. Kithsiri v Faizer Musthapha, (S.C.F.R. 362/2017, S.C.M.*

³ *Thilangani Kandambi v. State Timber Corporation & Others* (S.C.F.R. Application No: 452/2019; S.C.M. 14.12.2022, page 9)

10.01.2018); Wanasinghe v. Kamal Paliskara and Others, (S.C.F.R. 216/2014, S.C.M. 23.06.2021)].

- c. A party cannot benefit from the provisions in section 13(1) of the HRCSL Act where the complaint to the HRCSL is made one month after the alleged violation [Alagaratnam Manoranjan v. G.A. Chandrasiri, Governor, Northern Province, (S.C.F.R. 261/2013, S.C.M. 11.09.2014)].*
- d. The provisions of section 13(1) of the HRCSL are not available to a petitioner who has made a complaint to the HRCSL only to obtain an advantage by bringing his application within Article 126(2) of the Constitution [K.H.G. Kithsiri v Faizer Musthapha, (S.C.F.R. 362/2017, SCM 10.01.2018)].”*

13. This Court finds that, when the Petitioner filed the initial application dated 30/10/2015, he was fully aware that the jurisdictional requirement under Article 126(2) of the Constitution had already been breached. By producing P9, the Petitioner sought to rely on the statutory exclusion from the computation of time under Section 13(1) of the Human Rights Commission Act, thereby placing the Respondents on notice of such reliance. This obviates the need for the Respondents to have raised a specific objection in that regard.

14. Nevertheless, the Petitioner has failed to establish that an inquiry was in fact pending before the Human Rights Commission. No documentation has been produced, and neither the original Petition nor the Amended Petition provides any clarification in this regard. Accordingly, this Court holds that the Petitioner cannot invoke the protection afforded by Section 13(1) of the Act. The burden of proving the applicability of the statutory exception lies squarely with the Petitioner, and that burden has not been discharged.

15. The legal maxim “*vigilantibus non dormientibus jura subveniunt*”, which means; “*the law assists those who are vigilant, not those who sleep on their rights*”, applies with full force in this instance. In effect, the law supports

individuals who are proactive in protecting their rights and interests, and it will not assist those who are negligent or fail to act within reasonable timeframes.

16. The Petitioner, having been aware of the alleged infringement, chose not to invoke the jurisdiction of this Court within the prescribed time. No material has been placed before this Court to suggest that the Petitioner was prevented from doing so due to circumstances beyond his control, and the delay is unexplained.

CONCLUSION

17. The Petitioner failed to satisfy the threshold requirement under Article 126(2) of the Constitution, and the statutory exception under Section 13(1) of the Human Rights Commission Act was applicable. The application is time-barred and procedurally untenable. The Preliminary Objection is accordingly upheld, and the application numbers SC/FR/403/2015 and SC/FR/404/2015 are dismissed *in limine*.

Judge of the Supreme Court

A.H.M.D. Nawaz, J.

I agree

Judge of the Supreme Court

Achala Wengappuli, J.

I agree

Judge of the Supreme Court