

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

In matter of applications made under Article 17 read with Article 126 of the Constitution of the of the Democratic Socialist Republic of Sri Lanka

SC FR Application No. 69/2023

Rathnayake Mudiyanselage
Ranjith Madduma Bandara, No.
31/3, Kandawatte Terrace,
Nugegoda.

PETITIONER

Vs.

1. K. M. Mahinda Siriwardana,
Secretary to the Treasury,
Ministry of Finance, The
Secretariat, Colombo 01.

2. Hon. Attorney General,
Attorney General's
Department, Colombo 12.
(Named a Respondent in
terms of the first proviso to
Article 35(1) of the
Constitution.)

3. Saman Sri Ratnayake,
Commissioner General of
Elections,

Election Secretariat,
No. 02, Sarana Mawatha,
Rajagiriya.

4. Nimal Punchihewa (Ceased to hold office),
Chairman

4a. Mr. R.M.A.L. Rathnayake,
Chairman

5. S.B. Divaratne (Ceased to hold office), Member

5a. Mr. M.A.P.C. Perera,
Member

6. M.M. Mohamed (Ceased to hold office),
Member

6a. Mr. Ameer Faaiz,
Member

7. K.P.P. Pathirana,
Member
04th to 07th Respondents of;
The Election Commission,
Election Secretariat,
No. 02,
Sarana Mawatha, Rajagiriya.

8. G.K.D. Liyanage,
Government Printer,
Department of Government
Printing,
No. 118,
Dr. Danister De Silva
Mawatha, Colombo 08.

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

RESPONDENTS

SC FR Application No. 79/2023

1. Centre for Policy Alternatives
(Guarantee) Limited,
No. 6/5, Layards Road,
Colombo 00500.

2. Dr. Paikiasothy
Saravanamuttu,
No. 3, Ascot Avenue,
Colombo 00500

PETITIONERS

Vs.

1. Nimal G. Punchihewa,
Chairman – Election
Commission,
Election Secretariat,
Sarana Mawatha, Rajagiriya.

2. S.B. Divaratne

3. M.M. Mohamed

4. K.P.P. Pathirana

The 2nd to 4th Respondents –
Members – Election Commission

5. Saman Sri Ratnayake
Commissioner -General of
Elections
The 2nd to 5th all of:
Elections Secretariat,
Sarana Mawatha,
Rajagiriya

6. (Ms.) G. K. D. Liyanage
Government Printer
Department of Government
Printing,
No 118,
Dr. Danister de Silva Mawatha
Colombo 00800

7. KM Mahinda Siriwardana
Secretary to the Treasury,

Ministry of Finance Ministry of
Finance,
The Secretariat,
Colombo 00100

8. Tiran Alles
Minister of Public Security,
14th Floor, "Suhurupaya"
Battaramulla

9. P.V. Gunatilake
Secretary, Ministry of Public
Security
14th Floor, "Suhurupaya"
Battaramulla

10. C.D. Wickramaratne
Inspector General of Police
Police Head Quarters,
Colombo 00100

11. Dinesh Gunawardena
Prime Minister and Minister
of Public Administration,
Home Affairs, Provincial
Councils and Local
Government,
Independence Square,
Colombo 00700

12. H.K.D.W.M.N.B. Hapuhinna
Secretary,
Ministry of Public

Administration, Home Affairs,
Provincial Councils and Local
Government,
Independence Square,
Colombo 00700

13(A). Honourable Attorney
General,
Attorney General's
Department,
Colombo 01200

13(B). Honourable Attorney
General,
Attorney General's
Department,
Colombo 01200

RESPONDENTS

SC/FR/90/2023

1. Dr. Harini Amarasuriya,
Member of Parliament,
No. 33B, Janatha Mawatha,
Mirihana, Kotte.

2. Sunil Hadunneththi,
No. 92/3, Pasal Mawatha, Rukmale,
Pannipitiya.

3. Dr. M.R. Nihal Abeysinghe,
No. 134A, St. Saviour Road, Ja-Ela.

PETITIONERS

Vs.

1. K.M. Mahinda Siriwardana,
Secretary to the Ministry of Finance,
Ministry of Finance, Colombo 01.
2. Hon. Attorney General,
Attorney General's
Department, Colombo 12. (Named
as a Respondent in terms of the First
Proviso to Article 35(1) of the
Constitution)
3. G.K.D. Liyanage,
Government Printer,
Department of Government Printing,
No. 118, Dr. Danister De Silva
Mawatha, Colombo 08.
4. Inspector General of Police,
Police Headquarters,
Colombo 11.
5. Neil Bandara Hapuhinna,
Secretary, Ministry of Public
Administration, Home Affairs,
Provincial Councils and Local
Government,

Independent Square,
Colombo 07.

6. Nimal Punchihewa, Chairman,
The Election Commission,
Elections Secretariat,
Sarana Mawatha, Rajagiriya.
(Ceased)

6A. R.M.A.I. Rathnayake,
Chairman,
The Elections Commission,
Sarana Mawatha,
Rajagiriya.

7. S.B. Divarathne,
Member,
(Ceased)

7A. M.A. Pathmasiri
Chandrawansha,
Member.

8. M.M. Mohammed,
Member,
(Ceased)

8A. Ameer Mohammed Faaiz,
Member.

9. K.P.P. Pathirana,
Member,
(Ceased)

9A. Anusuya Shanmuganathan,
Member,
6th to 9A Respondents are all of The
Election Commission,
Elections Secretariat,
Sarana Mawatha, Rajagiriya.

10. P.S.M. Charles,
(Former Member of the Election
Commission) 1/8, Blue Ocean
Apartments,
No. 5, Railway Avenue, Nugegoda.

11. Saman Sri Rathnayake,
Commissioner General of
Elections,
Election Secretariat,
No. 02, Sarana Mawatha,
Rajagiriya.

12. Director General of
Government Information,
Department of Government
Information,
163, Kirulapana Avenue, Colombo
06.

13. Tiran Alles,
Minister of Public Security, 14th
Floor, Suhurupaya, Battaramulla.

14. Dinesh Gunawardena,
Prime Minister and the
Minister of Public
Administration, Home Affairs,
Councils and Local
Government,
Independence Square,
Colombo 07. Provincial
15. Nimal Siripala De Silva,
Minister of Ports, Shipping and
Aviation,
No. 19, Chaithya Road, Colombo 01.
16. Susil Premajayantha,
Minister of Education,
Isurupaya, Battaramulla.
17. Pavithra Devi Wanniarachchi,
Minister of Wildlife and Forest
Resource Conservation,
No. 1090, Sri
Jayawardenapura Mawatha,
Rajagiriya.
18. Douglas Devananda,
Minister of Fisheries,
New Secretariat,
Maligawatta, Colombo 10.
19. Bandula Gunawardena,
Minister of Mass Media,
Minister of Transport and

Highways,
9th Floor, "Maganeguma
Mahamedura",
Denzil Kobbekaduwa
Mawatha, Koswatte,
Battaramulla.

20. Keheliya Rambukwella,
Minister of Health,
"Suwasiripaya", No. 385, Rev.
Baddegama Wimalawansa
Thero Mawatha, Colombo 10.
21. Mahinda Amaraweera,
Minister of Agriculture,
No. 80/5,
"Govijana Mandiraya",
Rajamalwatta Road,
Battaramulla.
22. Wijayadasa Rajapaksa,
Minister of Justice,
Prison Affairs and
Constitutional Reforms,
No. 19, Sri Sangaraja
Mawatha, Colombo 10.
23. Harin Fernando,
Minister of Tourism and
Lands, 2nd Floor, Asset
Arcade Building, 51/2/1,
York Street, Colombo 01.

24. Ramesh Pathirana,
Minister of Industries,
Minister of Plantation
Industries,
Floor, Stage II,
"Sethsiripaya", Battaramulla.

25. Prasanna Ranatunga,
Minister of Urban
Development and Housing,
17th Floor,
"Suhurupaya",
Sri Subuthipura Road,
Battaramulla.

26. Ali Sabry,
Minister of Foreign Affairs,
Republic Building,
Sir Baron Jayathilaka
Mawatha, Colombo 01.

27. Vidura Wickramanayake,
Minister of Buddhasasana,
Religious and Cultural Affairs,
No. 135, Srimath Anagarika
Dharmapala Mawatha,
Colombo 07.

28. Kanchana Wijesekara,
Minister of Power and Energy,
No. 437, Galle Road,
Colombo 03.

29. Naseer Ahamed,
Minister of Environment,
No. 416/C/1,
"Sobadam Piyasa",
Robert Gunawardana
Mawatha, Battaramulla.

30. Roshan Ranasinghe,
Minister of Sports and Youth
Affairs, Minister of Irrigation,
No. 500, 10th Floor, T.B.
Jayah Mawatha, Colombo 10.

31. Manusha Nanayakkara,
Minister of Labour and
Foreign Employment,
6th Floor, "Mehewara Piyasa",
Narahenpita, Colombo 05.

32. Nalin Fernando,
Minister of Trade, Commerce
and Food Security, No. 492,
L.H. Piyasena Building,

33. Jeevan Thondaman,
Minister of Water Supply and
Estate Infrastructure
Development,
No. 35, "Lakdiya Medura",
New Parliament Road,
Pelawatta, Battaramulla.

34. Secretary to the Cabinet of
Ministers,
Office of the Cabinet of
Ministers, Republic Building,
Sir Baron Jayathilaka
Mawatha, Colombo 01.

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

RESPONDENTS

SC/FR/139/2023

1. People's Action for Free and Fair Elections (PAFFREL),
No. 16, Byrde Place,
Off Pamankada Road, Colombo 06.

2. Rohana Nishantha Hettiarachchi,
Executive Director, People's Action for Free and Fair Elections (PAFFREL). No 16, Byrde Place, Off Pamankada Road, Colombo 06.

PETITIONERS

Vs.

1. Hon. Attorney General,
Attorney General's
Department. Colombo 12.
2. Hon. Dinesh Gunawardena,
Hon. Prime Minister and Minister of
Public Administration, Home Affairs,
Provincial Councils and Local
Government,
Prime Minister's Office, No. 58, Sir
Ernest De Silva Mawatha, Colombo
07.
3. Hon. Nimal Siripala De Silva,
Minister of Ports, Shipping and
Aviation
4. Hon. (Mrs.) Pavithra Devi
Wanniarachchi,
Minister of Wildlife & Forest
Resources Conservation
5. Hon. Douglas Devananda,
Minister of Fisheries
6. Hon. Susil Premajayanta,
Minister of Education.
7. Hon. (Dr.) Bandula Gunawardena,
Minister of Transport and Highways
and Minister of Mass Media

8. Hon. Keheliya Rambukwella,
Minister of Health

9. Hon. Mahinda Amaraweera,
Minister of Agriculture

10. Hon. (Dr.) Wijayedasa
Rajapaksa, PC,
Minister of Justice, Prison Affairs
and Constitutional Reforms

11. Hon. Harin Fernando,
Minister of Tourism and Lands

12. Hon. (Dr.) Ramesh
Pathirana,
Minister of Plantation
Industries and Minister of
Industries.

13. Hon. Prasanna Ranatunga,
Minister of Urban Development and
Housing.

14. Hon. Ali Sabry, PC,
Minister of Foreign Affairs

15. Hon. Vidura
Wickramanayaka,
Minister of Buddhasasana, Religious
and Cultural Affairs

16. Hon. Kanchana Wijesekara,
Minister of Power and Energy
 17. Hon. Naseer Ahamed,
Minister of Environment
 18. Hon. Roshan Ranasinghe,
Minister of Irrigation and Minister of
Sports and Youth Affairs
 19. Hon. Manusha
Nanayakkara,
Minister of Labour and Foreign
Employment
 20. Hon. Tiran Alles,
Minister of Public Security
 21. Hon. Nalin Fernando,
Minister of Trade, Commerce and
Food Security
 22. Hon. Jeevan Thondaman,
Minister of Water Supply and Estate
Infrastructure Development
- All of the above 3rd to 22nd
Respondents are of:
Office of Secretary to the Cabinet of
Ministers,
Lloyd's Building, Sir Baron
Jayathilaka Mawatha, Colombo 01.

23. Mr. W.M.D.J. Fernando,
Office of Secretary to the Cabinet of
Ministers, Secretary to the Cabinet
of Ministers,
Lloyd's Building,
Sir Baron Jayathilaka
Mawatha, Colombo 01.

24. Mr. K.M. Mahinda Siriwardana,
Secretary to the Ministry of Public
Administration, Home Affairs,
Provincial Councils and Local
Government. Independence Square,
Colombo 07.

25. Mr. Neel Bandara Hapuhinne,
Secretary to the Ministry of Public
Administration, Home Affairs,
Provincial Councils and Local
Government.
Independence Square, Colombo 07.

25A. Mr.K.D.N. Ranjith Asoka
Secretary to the Ministry of Public
Administration, Home Affairs,
Provincial Councils and Local
Government
Independence Square,
Colombo 07.

26. Mr. P.V. Gunatillake,
Secretary to the Ministry of Public
Security, 14th Floor, "Suhurupaya",
Battaramulla.
27. Mrs. G.K.D. Liyanage,
Government Printer, Department of
Government Printing, No. 118, Dr.
Dannister de Silva Mawatha,
Colombo 08.
28. Mr. C.D. Wickramaratne,
Inspector General of Police. Police
Headquarters, Colombo 01.
29. S.R.W.M.R.P. Sathkumara,
Postmaster General, Post Head
Quarters, No. 310, D.R.
Wijewardana Mawatha, Colombo
01.
30. Nimal G. Punchihewa,
Chairman-Election Commission
31. S.B. Divaratne
32. M.M. Mohamed
33. K.P.P. Pathirana
the 31st to 33rd
Respondents, Members of the
Election Commission

33A. R.M.A.L. Rathnayake

Chairman- Election Commission

33B. M.A.P.C. Perera

Member - Election Commission

33C. Ameer Mohammed Faaiz

Member - Election Commission

33D. (Ms.) Anusuya Shanmuganathan

Member - Election Commission

34. Saman Sri Ratnayake,

Commissioner-General of

Elections

The 30th to 34th Respondents
are of: Elections Secretariat,
Sarana Mawatha, Rajagiriya.

RESPONDENTS

Before : Hon. Jayantha Jayasuriya, PC, CJ

Hon. Vijith K. Malalgoda, PC, J

Hon. Murdu Fernando, PC, J

Hon. E. A. G. R. Amarasekara, J

Hon. Yasantha Kodagoda, PC, J

Counsel : Upul Jayasuriya, PC. with Nisala Fernando instructed by Sampath Wijewardane for the Petitioners in SC. FR No.69/23.

Viran Corea with Luwie Ganeshathasan and Khyati Wickramanayaka instructed by Sinnadurai Sunderalingam & Balendra for the Petitioners in SC. FR. No. 79/23.

Nigel Hatch, PC. with Shantha Jayawardena, Ms. Wihangi Tissera, Ms. Azra Basheer, Hirannaya Damunupola, Ms. Niroshika Wegiriya, Sunil Watagala & Ms Illangage for the Petitioners in SC.FR. No. 90/23.

Asthika Devendra with Pulasthi Hewamanne, Kaneel Maddumage, Vimukthi Karunaratne & Ms. Abheetha Dinethri instructed by Manjula Balasuriya for the Petitioners in SC.FR. No. 139/23.

Faisz Mustapha, PC. with Faisza Markar & Bishran Iqbal instructed by Sanjeewa Kaluarachchi for the 14th Respondent in SC.FR. No. 90/23.

Saliya Pieris, PC. with Anjana Rathnasiri for the 6th, 6A, 7th, 7A, 8th, 8A, 9th, 9A, 104 & 11th Respondents in SC. FR. 90/23, for the 3rd, 4th, 4A, 5th, 5A, 6th, 6A, 7th, 7A Respondents in SC.FR. 69/23, for the 1st - 5th Respondents in SC. ER. 79/23 and for the 30th, 31st, 32nd, 33rd 34th, 33A, 33B, 33C & 33D Respondents in SC. FR.139/23.

Chandaka Jayasundera, PC. with Pulasthi Rupasinghe and Yusuff Atheeg instructed by Ms. K.M.S. Perera for the 10th Respondent in SC. FR. 90/23.

Eraj De Silva, PC. with Daminda Wijeratne, N. Ahmed instructed by Vidanapathirana Associates for the 12th Respondent in SC.FR. No. 90/23.

Nerin Pulle, PC, Additional Solicitor General with Ms. Ishara Madarasinghe, SC. and Ms. Madhushka Kannangara, SC. for 1st, 2nd, 8th and 9th Respondents in SC.FR. No. 69/23, for the 6th-11th and 13A and 13B Respondents in SC.FR. No. 79/23 for the 1st-4th, 13th, 15th-35th Respondents in SC.FR. No. 90/23 for the 1st-24th, 26th_29th Respondents in SC.FR. No. 139/23.

Argued on: 29.11.2023, 30.11.2023, 01.12.2023, 13.12.2023, 06.02.2024, 05.03.2024, 06.03.2024, 07.03.2024, 01.04.2024, 03.04.2024, 04.04.2024, 29.05.2024, 31.05.2024, 05.06.2024, 06.06.2024

Decided on: 22.08.2024

E. A. G. R. Amarasekara, J

The above applications Nos. SC FR 69/2023, SC FR 79/2023, SC FR 90/2023 and SC FR 139/2023 were filed before this Court against the Respondents named therein in each petition, under and in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter the Constitution), alleging that the failure to hold Local Authorities Elections 2023 as envisaged by law of this country and postponement of the same amounts to an infringement or imminent infringement and /or continuing infringement of the fundamental rights of the respective Petitioners of the said applications guaranteed to them under the Constitution.

As all the above matters revolved around the issue of failure to conduct the Local Authorities Elections, all those matters were taken up together before a specially nominated bench of five judges and a consolidated hearing took place. This judgment is the result of such consolidated proceedings.

SC FR 69/2023.

The Petitioner in this application, which was filed on 21.02.2023, is the General Secretary of the political party named “Samagi Jana Balawegaya”. He is also a Member of Parliament representing that party which intended to contest the Local Government polls 2023. In this application, the matters impugned before this Court are the decisions and actions of the 1st Respondent (the Secretary to the Treasury and Ministry of Finance) and of the 2nd Respondent (Honourable Minister of Defence, Finance, Economic Stabilisation, National Policies, Technology, Investment Promotion, Women, Child Affairs and Social Empowerment who is also H.E the President of the Republic represented in these proceedings by the Honourable Attorney General in terms of Article 35(1) of the Constitution) to not provide adequate funds, for the purpose of conducting Local Authorities Elections, to the Election Commission, of which the 4th, 5th, 6th and 7th Respondents who were the Chairman and Members during the relevant period. The Petitioner in SC FR 69/2023 alleges said actions and decisions of the Secretary to the Treasury and Ministry of Finance and the Minister of Finance are arbitrary, wrongful, illegal, malicious, capricious, pernicious and unlawful. Petitioner in application No.

FR.69/2023 have made the Commissioner General of Elections, Chairman and members of the Election Commission, Government Printer and the Honourable Attorney General as the other Respondents (3rd to 9th Respondents). However, while praying for declarations that the Petitioners' fundamental rights guaranteed in terms of Articles 12(1), 14(1)(a) and their right to exercise franchise guaranteed by Articles 3 and 4 of the Constitution have been infringed and consequential reliefs, the Petitioner has focussed his application mainly on the alleged infringing acts and decisions of the Secretary to the Treasury and Ministry of Finance and the Minister of Finance which caused the non-provision of adequate funds to hold the Local Government polls. Along with his application, the Petitioner has tendered documents marked P1 to P10 in support of his application. This Court, on 03.03.2023, granted leave to proceed under Articles 12(1) and 14(1)(a) of the Constitution. The 1st Respondent, the Secretary to the Treasury and the Ministry of Finance, filed his limited objections and objections along with the documents referred to therein (documents marked A, B, C and their annexures and documents marked IR1 to IR10 and their annexures) by affidavits dated 28.02.2023 and 22.06.2023 respectively. The 8th Respondent, the Government Printer filed her objections by her affidavit dated 21.06.2023 along with the documents marked 8R1 to 8R10B. The 2nd and 9th Respondents in the Application SC FR 69/2023 (Hon. Minister of Finance and Hon. Attorney General) have by their motion dated 08/11/2013 stated that they rely on the objections filed by the 1st and 8th Respondents. The 4th Respondent, the Chairman of the Election Commission has filed his affidavit dated 22.05.2023 along with documents marked 4R1 to 4R27, which basically moves for appropriate orders from this Court on the 1st Respondent and the 8th Respondent and few other officials in order to facilitate the holding of Local Government polls. The Petitioner has filed his counter objections by way of an affidavit dated 27.07.2023 along with documents marked C1 and C2.

SC FR 79/2023

The 1st Petitioner in this application, which was filed on 28.02.2023, is the 'Centre for Policy Alternatives (Guarantee) Limited and the 2nd Petitioner is its Executive Director. The Petitioners in this application has named as the Respondents, the Chairman of the Election Commission and its members (1st to 4th Respondents), Commissioner General of Elections (5th Respondent), Government Printer (6th Respondent), Secretary to the Treasury (7th Respondent), Minister of Public Security and Secretary to the said Ministry (8th and 9th Respondent),

Inspector General of Police (10th Respondent), Prime Minister and Minister of Public Administration, Home Affairs, Provincial Councils and Local Government and the Secretary to the Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government (11th and 12th Respondents), Honourable Attorney General [13A Respondent in terms of Article 126(2) of the Constitution and SC Rule 44(3)] and Honourable Attorney General [13B Respondent in terms of Article 35(1) of the Constitution in view of the alleged infringing acts of H.E the President of Sri Lanka acting in his capacity as the Minister of Finance, Economic Stabilization and National Policies]. In support of their application, the Petitioners have tendered documents marked P1(a) to P10 with their Petition. Among other consequential reliefs prayed in the application, the Petitioners have prayed for declarations that failure to conduct Local Government Elections as scheduled or within the time frame stipulated by law, as well as actions of one or more Respondents jointly or separately, constitute and/or entail infringement and / or continuing infringement and / or imminent further infringement of fundamental rights of them and / or citizens of Sri Lanka guaranteed under Article 10 and / or Article 12(1) and/or Article 14(1)(a) of the Constitution. On 16.03.2023, this Court granted leave to proceed on this application. The 7th Respondent, Secretary to the Treasury has filed his objections by way of an affidavit dated 17.05.2023 along with documents marked 7R1 to 7 R 4(B) with some annexures attached to 7R3. The 6th Respondent, the Government Printer has tendered her objections by way of an affidavit dated 19.05.2023 along with documents marked 6R1 to 6R 11B. The 10th Respondent, Inspector General of Police (IGP), has filed his objections by way of an affidavit dated 15.06.2023 along with the documents marked 10R1 to 10R 9B. On behalf of the Petitioners, the 2nd Petitioner in this application has filed his counter affidavit dated 23.06.2023 in response to the objections of 6th, 7th and 10th Respondents.

SC FR 90/2023

The Petitioners of this Application, which was filed on 14.03.2023, are members of National People's Power ("NPP") alias Jathika Jana Balawegaya which is a recognised political party. The 1st Petitioner is a Member of Parliament nominated by NPP while the 2nd Petitioner is the Mayoral Candidate for the Matara Municipal Council. The 3rd Petitioner is the Secretary of the "NPP". The said Petitioners in this application challenge the actions and / or inactions and/or decisions by the 1st to 35th Respondents, or one or more of them, by which the said Respondents did not and/or failed to hold the Local Authorities Election scheduled to be held on 09.03.2023

and caused it to be postponed indefinitely. Thus, the said Petitioners pray, *inter-alia*, for declarations to the effect that the failure and / or refusal to hold the said Local Authorities Election in terms of the law as scheduled is in violation of the Petitioners' fundamental rights guaranteed under Article 12(1) and 14(1) (a) of the Constitution. They further seek necessary directions and orders from this Court to the Respondents for the holding of free and fair Local Authority Elections. This Court granted leave to proceed in this application under Articles 12(1) and 14 (1) (a) of the Constitution. Petitioners in this application have made the Secretary to the Treasury the 1st Respondent, Hon. Attorney General the 2nd Respondent in terms of Article 35(1) of the Constitution to represent the President of the Republic who is also the Minister of Finance, Economic Stabilization and National Policies, Government Printer the 3rd Respondent, IGP the 4th Respondent, Secretary to the Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government the 5th Respondent, Chairman of the Election Commission the 6th Respondent, Members of the Election Commission the 7th to 9th Respondents, P. S. M. Charles, a former member of the Election Commission the 10th Respondent, The Commissioner General of Elections the 11th Respondent, the Director General of Government Information the 12th Respondent, Minister of Public Security who is also a member of the Cabinet the 13th Respondent, the other members of the Cabinet of Ministers the 14th to 33rd Respondents, Secretary to the Cabinet of Ministers the 34th Respondent, Hon. Attorney General in terms of Article 134(1) of the Constitution and S C Rule 44(1)(b) the 34th Respondent. The 1st Respondent, Secretary to the Minister of Finance has filed his limited objections by way of an affidavit dated 27.03.2023 along with the documents marked 1R1(A), 1R2(B) and annexures marked X, Y, Z1, Z2, Z3 along with their annexures. The 1st Respondent has also filed his objections dated 28.08.2023 along with 1R3 to 1R5. The 4th Respondent, IGP has tendered his objections by way of an affidavit dated 29.08.2023 along with the marked documents 4R1 to 4R9B. The 3rd Respondent Government Printer has filed her objections by way of an affidavit dated 28.08.2023 along with the documents marked 3R1 to 3R11. The 6A,7A,8A and 11th Respondents (present Chairman and some of the members of the Election Commission and the Commissioner General of Elections) have tendered their affidavit in response dated 24.08.2023 along with the documents marked R1 to R29. The 1st Respondent, Secretary to the Ministry of Finance, has filed a further affidavit dated 15.09.2023 in reply to the affidavit tendered by the 6A to 8A and 11th Respondents. The 3rd Respondent, Government Printer and the 4th Respondent, IGP also have filed further affidavits dated 15.09.2023 and 20.09.2023 respectively in response to the aforesaid affidavit filed by the 6A to 8A and 11th Respondents. The 2nd, 13th, 15th to 35th Respondents by their motion dated 08.11.2023 have

informed this Court that they rely on the objections already filed by the 1st, 3rd and the 4th Respondents in this application. The 12th Respondent, the Director General of Government Information has filed his objections dated 17.11.2023 along with the documents marked 12R1 and 12 R2. The 10th Respondent, P.S.M Charles has filed her affidavit dated 20.11.2023 creating doubts about the propriety of the decisions of the Election Commission with regard to the holding of Local Authorities Election 2023. The 11th Respondent, the Commissioner General of Elections have filed another affidavit dated 04.12.2023 in reply to the affidavit filed by the said 10th Respondent refuting her claim that no proper decisions were taken by the Election Commission to hold the said elections. On behalf of the Petitioners, the 3rd Petitioner has tendered counter affidavits dated 18.09.2023 (responding to the affidavits of 1st, 3rd, 4th, 6A to 8A and 11th Respondents) and 27.11.2023 (responding to the affidavits of 10th and 12th Respondents).

SC FR 139/2023

The Petitioners in this application, which was filed on 15.05.2023, are the ‘People’s Action for Free and Fair Elections (PAFFERAL), the 1st Petitioner and its Executive Director, the 2nd Petitioner. This application also centers around the alleged infringement, continuing infringement or imminent infringement of Fundamental Rights guaranteed under Articles 10,12(1) and 14(1)(a) of the Constitution due to the relevant decisions, actions and Cabinet Memoranda and related letters which hinder the conduct of Local Authorities Election 2023 as the relevant authorities failed in providing sufficient funds. Thus, the Petitioners has prayed for declaratory reliefs with regard to the said infringement, continuing infringements or imminent infringements and consequential reliefs that will make the conducting of the said election possible. Along with the Petition the Petitioners have tendered documents marked P1 to P25 in support of their application. The Petitioners have made Honorable Attorney General the 1st Respondent in dual capacity firstly as required by law in fundamental rights applications and secondly in terms of Articles 35(1) and 35(3) to represent the H.E. the President of Sri Lanka who is also the Minister of Finance, Economic Stabilization and National Policies. The 2nd Respondent is the Hon. Prime Minister who is also the Minister of Public Administration, Home Affairs, Provincial Councils and Local Government. The 3rd to 22nd Respondents are the other members of the Cabinet of Ministers of Sri Lanka while 23rd Respondent is the Secretary to the Cabinet of Ministers. 24th Respondent is the Secretary to the Treasury as well as the

Secretary to the Ministry of Finance. The 25th Respondent is the Secretary to the Ministry of Public Administration, Home affairs, Provincial Councils and Local Government while the 26th Respondent is the Secretary to the Ministry of Public Security. The 27th, 28th and 29th Respondents are the Government Printer, IGP and Post Master General of Sri Lanka respectively. The 30th to 34th Respondents are the Chairman of the Election Commission, members of the Election Commission and the Commissioner General of Elections. The 27th Respondent, the Government Printer has filed her objections by way of an affidavit dated 29.08.2023 along with the documents marked 27R1 to 27 R11. The 28th Respondent, IGP has filed his objections by way of an affidavit dated 29.08.2023 along with the documents marked 28R1 to 28R9B. The 24th Respondent, the Secretary to the Treasury has tendered his objections by way of an affidavit dated 29.08.2023 along with the documents marked 24R1-A, 24R1-B, X,Y,Z1,Z2,Z3,24R2,24R3,24R4 and their annexures. On behalf of the Petitioners, the 2nd Petitioner has tendered a counter affidavit dated 25.09.2023. The 33A,33B,33C and 34th Respondents (present Chairman, present members of the Election Commission and the Commissioner General of Elections) have filed their affidavit in objections dated 25.09.2023 along with the documents marked 33R-1 to 33R-37.

When looking at the prayers of each Petition, it can be perceived that the Petitioner in SC FR 69/2023 has focused more on the alleged infringements caused by the Secretary to the Treasury and the Ministry of Finance and H.E. the President as Minister of Finance by not releasing necessary funds and the alleged infringement caused by the Government Printer by not tendering postal voting poll cards. In other Petitions, the relevant Petitioners have prayed for reliefs against all the parties they have named as Respondents. Thus, other than against the Secretary to the Treasury and the Ministry of Finance and / or the Minister of Finance, they have prayed reliefs against the Chairman and the Members of the Election Commission, Commissioner General of Elections, Cabinet of Ministers including the Minister in charge of Local Government Elections, the Secretary to the Cabinet of Ministers and Secretaries of relevant Ministries, Government Printer and IGP etc. During the argument most of the Petitioners focused on the failure to provide funds. Further, the Petitioners in SC FR 90/2023 also stressed on the duties and responsibilities of the Election Commission.

Affidavits filed by the Chairman of the Election Commission at the relevant time or by the present Chairman and members of the Election Commission and Commissioner General of Elections in the above applications stress on the fact that denial of funding would create a dangerous precedent that would impinge on the democratic rights of the people and move for

appropriate orders from this Court on the relevant officials to facilitate holding of elections. Thus, it is clear, though the Election Commission represent a limb of the executive arm of the State, it does not stand with the position taken up by the Secretary to the Treasury and Ministry of Finance and the parties who stands with him stating that the holding of elections was impossible due to the lack of funds. The IGP, the Government Printer and the Director General of Information have filed objections to indicate that they were not involved in any infringing act.

With the conclusion of the oral arguments, this Court directed the parties to file written submissions along with documents they rely on but only few have annexed the documents they rely on to their final written submissions.

Some important Facts placed before this Court through the above applications

- On or around 10.02.2018, the Local Authorities Elections were held across the country (except in Elpitiya), and thereafter on 10.02.2018, members were declared as elected to the Local Authorities (except in Elpitiya) in Sri Lanka.
- Therefore, after the lapse of the 48 months, the terms of the said Local Authorities (except Elpitiya) expired on or about 08.03.2022.
- In respect of Elpitiya, Local Authority Elections were held on the 11th October 2019, and in terms of the Pradeshiya Sabha Act, its term was to continue for four years from the date of commencing office.
- On or around 09.01.2022, the then Minister of Public Administration, Provincial Councils and Local Government extended the terms of Local Authorities that were due to expire in terms of relevant provisions in Municipal Council Ordinance, Urban Council Ordinance and Pradeshiya Sabha Act, until 19.03.2023 by the Extraordinary Gazette Notification bearing No. 2262/2 dated 10.01.2022, marked P4 with the Petition in SC FR 79/2023 and as P3 with the Petition in SC FR 139/2023.
- Thus, the terms of the Local Authorities (except Elpitiya) were to expire on 19.03.2023, with no further period of extension available in terms of the law.

- As per Section 25 of the Local Authorities Election Ordinance (as amended), elections shall be held within a period of six months preceding the date on which the term of office of the members to be elected is due to commence. Thus, the election could have been declared from or around 21.09.2022 as the terms of the Local Authorities (except Elpitiya) were to expire on 19.03.2023.
- As per the budget estimates marked P7 with the petition in SC FR 69/2023, around ten billion Rupees has been allocated to the Election Commission for the fiscal year 2023.
- On 08.12.2022 the Chairman of the Election Commission issued a press release informing that at the meeting of the Election Commission held on 08.12.2022, the Election Commission decided to notify the calling of nominations for the Local Authorities Election during the last week of December 2022 – vide P1 marked with the Petition in SC FR 90/2023.
- The Election Commission by Notice published in the Government Gazette (Extraordinary) No.2311/26 dated 21.12.2022 appointed Returning Officers and Assistant Returning Officers for all the administrative districts to conduct the said Local Authorities Election and also appointed the District Secretary of each administrative district as the returning officer for the respective administrative district - vide P2 annexed to the Petition in SC FR 90/2023 as well as in SC FR 69/2023.
- By the Notice published in the Government Gazette (Extraordinary) bearing No. 2312/44 dated 29.12.2022, the Election Commission proceeded to issue notices as required by Sections 27E, 28(2), 28(2)(A), 28(2)(B) and 29(1)(A)(I)(II) of the Local Authorities Elections Ordinance No.53 of 1946 (as amended), which, inter alia, stipulated the sums of money to be deposited for the purpose of election by the candidates nominated by recognized political parties and independent groups - vide Government Gazette (Extraordinary) No. 2312/44 dated 29.12.2022 annexed and marked as P3 to the Petition in SC FR 90/2023 as well as in SC FR 69/2023.

- On or around 04.01.2023, the Election Commission announced that notices calling for nominations for Local Authorities Election 2023 for 340 Local Government Authorities (excluding Elpitiya) were being displayed and nominations would be accepted between 18.01.2023 to 21.01.2023 and election deposits would be accepted until 12 noon on 20th January 2023 – vide P5 marked with the Petition in SC FR 79/2023 and P4 and P5 marked with the Petition in SC FR 90/2023 and P4 marked in SC FR 139/2023.
- During the period for making deposits by recognized political parties and independent groups, the Secretary to the Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government, issued a circular letter dated 10.01.2023 addressed to all the District Secretaries (who had been appointed as Returning Officers as aforesaid) stating that the Cabinet of Ministers directed him to notify the District Secretaries not to accept deposits from the candidates for the Local Authorities Election of 2023 until further notice, vide P6 annexed to the Petition in SC FR 90/2023 and P5 in SC FR 139/2023. On the same day (10.01.2023) the Election Commission issued a circular dated 10.01.2023 bearing No. LAE/2023/02, addressed to all the Returning Officers reiterating that it is the duty of the Returning Officers to accept the deposits and nominations- vide P7 annexed to the Petition of SC FR 90/2023. On 13.01.2023 the Election Commission issued a press release, stating that the Election Commission summoned the said Secretary before the Election Commission on 10.01.2023 and questioned him regarding the issuance of the said circular and thereupon the said Secretary to the Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government informed that he had withdrawn the said circular after about one hour from issuing the same and apologized to the Election Commission for same.- vide P8 annexed to the Petition in SC FR 90/2023.
- Thereafter, the Election Commission published a notice under Section 27A of the Local Authorities Elections Ordinance, in the Government Gazette (Extraordinary) No. 2315/05 dated 16.01.2023 notifying the political parties that are considered as recognized political parties for the upcoming Local Authorities election – vide P9 annexed with the Petition in SC FR 90/2023.

- The Election Commission published an order in the Government Gazette (Extraordinary) No. 2315/27 dated 18.01.2023 notifying that employees in certain essential services will be treated as postal voters – vide P10 annexed to the Petition in SC FR 90/2023.
- Thereafter, it appears that the Returning Officers by notices published in the Government Gazette under Section 38(1)(e) of the Local Authorities Elections Ordinance, notified that said election will be held on 09.03.2023 – vide the Notice published in the Government Gazette No. 2317/02 dated 30.01.2023 by the Returning Officer for Colombo District annexed as P11 to the Petition in SC FR 90/2023. It is said that by way of 25 separate Gazette Notifications, the returning officers for the separate districts published Gazette notifications in terms of section 38(1) of the Local Authorities Elections Ordinance – vide paragraph 15 of the Petition in SC FR 79/23 and P22 filed with the Petition in SC FR 90/2023.
- As per the news reports published in the Newsfirst website tendered as P12 with the Petition in SC FR 90/2023, H.E. the President of the Republic summoned the members of the Election Commission for a discussion on the forthcoming Local Authorities Election.
- It appears that owing to media reports which indicated that members of the Election Commission had resigned and one member of the Election Commission had handed over the letter of resignation to the Presidential Secretariat, on 26.01.2023, the Election Commission issued a press release stating that the Election Commission has not received a letter of resignation from any member of the Commission and that the Election Commission has observed that false news were being spread to cause the people to lose faith in the Election Commission -vide the said press release dated 26.01.2023 annexed as P13 with the Petition in SC FR 90/2023.
- Replying to a purported media release made on 29.01.2023 by the Director General of Government Information (12th Respondent in SC FR 90/2023) stating that for the commencement of the Local Authorities Election a notice signed by the members of the Election Commission had not been sent to the Department of Government Printing,

on 30.01.2023, the Election Commission issued a press release denying the claim made by the said Director General of Government Information and stating that the Election Commission has taken all the necessary steps according to law for the conduct of the elections – vide the said press release dated 30.01.2023 annexed and marked as P14 with the Petition in SC FR 90/2023.

- On 02.02.2023 the Secretary to the Ministry of Finance, who has been named as a Respondent in all the applications, based on a Cabinet Decision taken on 30.01.2023, issued the Budget Circular No. 02/2023, addressed to all the Secretaries to the Ministries and Heads of Departments, stating that only funds relating to maintaining essential services would be released, and if any public officer enters into an obligation contrary to the said instructions, such public officer will be held personally liable for same. The said budget circular has been annexed as P15 to the Petition in SC FR 90/2023 and as P6 to SC FR 79/2023. As per the contents of the said circular, it is indicated that due to the unhealthy and unexpected economic situation prevailing in the country, the addressees of the circular have been informed of the difficulties arisen with regard to the management of public finance and especially through two circulars, namely circular Nos.01/2023 and 09/2022, their attention has been brought to the steps that should be taken. Aforesaid two circulars have been marked as P15(a) and P15(b) along with the Petition in SC FR 90/2023.
- On or around 06.02.2023, a Cabinet Memorandum has been submitted by H.E the President in his capacity as the Minister of Finance, Economic Stabilization and National Policies under the heading "Maintaining Essential Public Services in the Most Difficult Financial Circumstances" proposing inter alia to order the Treasury to take necessary steps to provide imprest only for the essential public expenditure listed under paragraph 2.1 therein (22 items) with a view to maintain the Public Service until the condition of government revenue improves -vide the Cabinet Memorandum bearing No. MF/NB/006/CM/2023/040 dated 06.02.2023 marked as P6 with the Petition in SC FR 139/2023 (Also see 1R4B in SC FR 69/2023). At paragraph 2.2 of that Cabinet Memorandum, it is stated that it is expected to release imprest only for the following purposes;
 - a) essential recurrent expenditure mentioned in paragraph 2.1

- b) expenditure related to capital development projects financed through local funds,
- c) long overdue payments and,
- d) essential services such as emergency maintenance and repairs.

At paragraph 2.3 of that memorandum, it is stated that however, as imprest will only be released for other requirements if there are any balance provisions after allocation of imprest for the unpostponable activities mentioned under paragraph 2.2, the Treasury will proceed to inform the Chief Accounting Officer / Accounting Officer to take steps to further control these expenses.

At paragraph 3 of the above Cabinet Memorandum, approval of the Cabinet of Ministers was sought to advise the Secretary to the Treasury to release imprest only for the above expenditure incurred with local funds until the revenue condition reaches the expected level. As per the letter dated 07.02.2023, written to the Secretary to the Ministry of Finance by the Secretary to the Cabinet of Ministers, marked P7 in SC FR 139/2023, said approval has been granted. However, the Local Authorities Election is not listed as an item which is considered as 'essential' in the above Cabinet Memorandum.

- On 09.02.2023 the Election Commission issued two press releases, notifying the number of applications received for postal votes and the number of political parties and independent groups that would be contesting for each district and said press releases have been annexed and as P16 and P17 with the Petition in SC FR 90/2023.
- **As per the Cabinet decision dated 13.02.2023, on the proposal of H.E. the President in his capacity as the Minister of Finance, it had been decided that any surplus of government revenue was to be utilized on priority basis to meet the following expenditure (other than the recurrent expenditure outlined in paragraph 2.1 of the Cabinet Memorandum dated 06.02.2023 mentioned above)**
 - a) **Purchase of paddy from farmers during Maha Season 2022/23**
 - b) **Expenditure related to minimizing malnutrition among children and pregnant mothers**
 - c) **Gratuity payments**

- d) Settlements of outstanding bills pertaining to Decentralized Budget Programme
- e) Any other essential expenditure as found necessary and approved by the Minister of Finance, Economic Stabilization and National Policies. - vide P8 annexed to the Petition in SC FR 139/2023
- On 14.02.2023 the Election Commission issued a press release stating that due to unavoidable circumstances beyond the control of Election Commission, the postal ballot papers will not be issued on 15.02.2023 as it was not possible to collect the ballot papers on time- vide P18 marked with the Petition in SC FR 90/2023. As per the media release marked P8a and P8b with the petition in SC FR 69/2023 dated 14.02.2023 and 17.02.2023 respectively, the postal voting was postponed indefinitely due to the fact that the Government Printer did not tender the postal voting cards to the Election Commission on due dates. The Commissioner General of Elections communicated the said postponement to the returning officers by letter dated 17.02.2023- vide document P9 in SC FR 69/2023.
- As per the letter dated 15.02.2023 marked P9 in SC FR 139/2023, the Secretary to the Ministry of Finance has communicated to the Chairman of the Election Commission that to release further funds for the conducting of the election as requested by the Election Commission needs the approval of the Minister of Finance in terms of the Cabinet Decision dated 13.02.2023 mentioned above. The amount of money that has been already released for the Local Government polls 2023 is also mentioned in that letter.
- As per the media reports marked P6 in SC FR 69/2023, it appears that on or around 17.02.2023, the Chairman of Election Commission disclosed to the media that the Secretary to the Ministry of Finance had appraised him that as per the circular issued, money could be allocated only for essential services which do not include election activities and the approval of H.E. the President was necessary to obtain funds.
- It appears that on or about 17.02.2023 the Government Printer at a press conference said, inter alia, that the Department of Government Printing had printed postal ballot

papers for 17 districts but unable to print the balance for the reasons that only 2 police officers were assigned for the security and safety of ballot papers and her department needs 60 police officers to provide security and if such security is provided, the balance can be printed within 6 days. – vide P19 and P19(a) with the Petition in SC FR 90/2023 and P7a and P7b annexed to SC FR 79/2023. However, it is alleged that considerable number of police officers were deployed in the Independence Day celebrations on the 4th of February 2023 and in the Janaraja Perahera on the 19th February 2023- vide paragraph 21 to 23 of the Petition in SC FR 79/2023

- *On 21.02 2023, the application bearing number SC FR 69/2023 was filed before this Court.*
- On 23.02.2023, H.E. the President of the Republic attended Parliament and made a speech wherein he stated, inter alia, that "We don't have money. And on the other hand, there is no election at hand as well' -vide the Hansard containing the said speech marked as P20(b) with the Petition in SC FR 90/2023.
- On 24.02.2023 the Election Commission released a press release informing two decisions made at its meeting held on 24.02.2023, namely (1) that for reasons beyond the control of the Election Commission the Local Authorities Election will not be held on 09.03.2023 and a fresh date for the election would be notified on 03.03.2023 and (2) that to make a request to the Speaker of Parliament to intervene to obtain finances from the Treasury for the conduct of the elections – vide press release dated 24.02.2023 annexed as P21 with the Petition in SC FR 90/2023 and P11 with SC FR 139/2023.
- *On 28.02.2023, the application bearing number SC FR 79/2023 was filed before this Court.*
- However, on 03.03.2023 the Election Commission did not announce a fresh date for the Local Authorities Elections. On 07.03.2023, the Commissioner General of Elections issued a press release to the effect that 25.04.2023 would be a suitable date for the holding of the said election and the returning officers would make the notifications in

due course. A copy of the said press release dated 07.03.2023 is annexed as P23 with the Petition in SC FR 90/2023.

- On 03.03.2023, in one of the applications, namely SC FR 69/2023, this Court granted interim orders restraining and / or preventing the Minister of Finance and the Secretary to the said Ministry from withholding the funds allocated by the Budget for the year 2023 for the purpose of conducting Local Government Elections
- **On 07.03.2023, the Chairman of the Election Commission sent a letter to the Secretary to the Ministry of Finance stating that it had decided to advise returning officers to fix the date on which the Local Government poll to be held as 25.04.2023 and also requesting to release Rs. 1100 million for conducting the said election before 25.04.2023. The Chairman further requested to release a sum of money totaling up to Rs. 1360 million to three government departments, namely Police, Government Printer, and Postal departments, as those departments have requested those amounts. - vide P13 annexed to the Petition in SC FR 139/2023. In response to that letter the Secretary to the Ministry of Finance has replied by letter dated 07.03.2023 annexed as P14 in SC FR 139/2023, stating that, as per the Cabinet Decision dated 13.02.2023, the above letter requesting funds has been referred to the Minister of Finance for the approval to release and once the approval is given steps will be taken to release the funds.**
- *On 14.03.2023 application bearing number SC FR 90/2023 was filed before this Court.)*
- Anyhow, no steps have been taken by the relevant Respondents towards holding the said Local Authorities Elections on 25.04.2023.
- *On 15.05.2023, the application bearing number SC FR 139/2023 was filed before this Court.*

Constitutional and Statutory Duty to hold Local Government Elections

Article 103 of the Constitution establishes the Election Commission consisting of five members who are appointed by the President on the recommendation of the Constitutional Council. One member so appointed shall be appointed as the Chairman of the Commission by the President.

In terms of Article 103(2), the object of the Commission shall be to conduct free and fair elections and Referenda.

In terms of Article 104(B)(1), among other powers, functions and duties of the Commission relating to other elections, the Commission is also empowered to exercise, perform and discharge all such powers, duties and functions conferred or imposed on or assigned to -

(a) the Commission; or

(b) the Commissioner-General of Elections,

by the Constitution, and by the law for the time being relating to the election of members of Local Authorities.

As mentioned above the term of last Local Authorities were due to expire on 08.03.2022 but it was extended in terms of the relevant statutes by the then Minister of Local Government by a period of 12 months until 19.03.2023. In term of Section 24 of the Local Authorities Election Ordinance, every election of the members of a Local Authority shall be held in the manner provided by the said Ordinance.

In term of Section 25 of the Local Authorities Election Ordinance, every general election of the members of a local authority shall be held within a period of six months preceding the date on which the term of office of the members who are to be elected is due to commence. As per Section 26 of the Local Authorities Election Ordinance the returning officer of the district is required to publish a notice of intention to hold such election. After receiving nominations, if there is a contest between different political parties or independent groups as contemplated by Section 37 of the Local Authorities Election Ordinance, with the receipt of the report under aforesaid Section 37, the relevant district returning officer has to publish a notice in Gazette under Section 38 of the said Ordinance specifying several factors including the date of the poll. Thus, the process for Local Government Election is triggered by the law itself when the term of the existing Local Authority reaches its final six months.

Thus, it is clear that in terms of the aforesaid provisions of the Constitution and the Local Authorities Elections Ordinance, the Election Commission was duty bound to hold the

**Local Authorities election before the expiry of the term of Local Authorities on 19.03.2023
in accordance with the provisions in the Local Authorities Elections Ordinance.**

In terms of Article 33(c) of the Constitution, in addition to the powers and functions expressly conferred on or assigned to H.E. the President by the Constitution or by any written law, the President of the Republic shall have the power to ensure the creation of proper conditions for the conduct of free and fair elections, at the request of the Election Commission.

Thus, the Head of the Executive, H.E. the President of the Republic is also subject to the constitutional duty to exercise the power under and in terms of Article 33(c), to ensure that all necessary steps are taken in order to conduct free and fair elections at the request of the election Commission. In the matter at hand, H.E. the President is also the Minister of Finance.

On the other hand, one can argue that the people of this country have legitimate expectation to elect members of Local Authorities of their choice¹ as per the law when the election becomes due. The People can also legitimately expect that the money allocated by their representatives in the Parliament would be used for the purpose it was allocated unless a deviation is needed only on unavoidable reasonable grounds.

Hence, if the Election Commission is in breach of the aforesaid constitutional and statutory duty or the legitimate expectations and / or H.E. the President being the Minister of Finance and head of the Executive relevant to the present applications in issue is in breach of aforesaid constitutional duty or legitimate expectations without a lawful cause and /or due to an arbitrary and / or malicious and/or wrongful and / or illegal and/or capricious and/or pernicious act or decision as alleged, and thereby violated a co-related right/s of the Petitioner or the people, there is a case to be considered under Article 12(1) of the Constitution. Whether any breach of the said duties or legitimate expectations will be discussed later in this judgment.

Freedom of Expression, Franchise as part of sovereignty and polling at Local Government Elections

The Petitioners in their Petitions allege that there is an infringement and /or continuing infringement and / or imminent infringement of fundamentals rights protected in terms of

¹ **Mohamed Hussain Hajir Muhammad and others v Election Commission of Sri Lanka and Others SC FR No.35/2016 decided on 15.12.2017**

Article 10, 12(1) and 14 (1)(a) of the Constitution and there is a violation of their right to use franchise as contemplated by Articles 3 and 4 of the Constitution. I have already discussed above the relevance of Article 12(1) in relation to the legitimate expectations of a voter as well as in relation to the constitutional and statutory duties. Now, I endeavor to see whether it is necessary to consider infringements in relation to Articles 10, 14(1)(a) and violation of franchise in terms of Articles 3 and 4.

In **Karunathilaka and Another v Dayananda Dissanayake, Commissioner of Elections and Others (1999) 1 Sri L R 157**, the freedom of speech and expression guaranteed by Article 14(1) (a) of the Constitution was broadly construed to include the exercise of the right of an elector to vote at the election (at page 173 and 174).

Per Fernando, J.

"The silent and secret expression of a citizen's preference between one candidate and another by casting his vote is no less an exercise of the freedom of speech and expression than the most eloquent speech from a political platform." (at page 174)

In **Mediwake and Others v Dayananda Dissanayake, Commissioner of Elections and Others (2001) 1Sri L R 177** it was held inter alia that:

"It is not disputed that the Petitioners, being registered voters of the Kandy District, had a legal right to vote at that election, and that voting, in the exercise of that legal right, was a form of "expression" guaranteed by Article 14(1)(a), as I held in Karunatileke v. Dissanayake." (at page 209)

The aforementioned view was further confirmed in **Thavneethan v Dayananda Dissanayake Commissioner of Elections and Others (2003) 1Sri L R 74**.

Even the Respondents for whom the learned Additional Solicitor General (ASG) appears do not contest that the right to vote at a Local Government Election would be part of the freedom of expression guaranteed in Article 14(1) (a) of the Constitution.

Above clearly indicates that voting in elections falls within the scope of freedom of expression as contemplated in Article 14(1)(a) of the Constitution. Thus, denial of a free and fair Local Government Election within the period it should have been held can be considered within the scope of fundamental rights guaranteed under Article 14(1)(a) of the Constitution.

The word franchise among other meanings generally means the right to vote in elections. This may in the context of the constitutional provisions include a person's right to present himself as a candidate in an election. The Petitioners in these applications contend that the alleged failure to hold Local Government Polls 2023 as contemplated by law was violative of the right of franchise enshrined in Articles 3 and 4 of the Constitution. Thus, it is required to see whether this Court need to inquire into the allegations that the alleged acts of the Respondents are violative of franchise as encapsulated in Articles 3 and 4 of the Constitution, in these applications filed in terms of Article 17 and 126 of the Constitution. Article 3 reads as follows;

“In the Republic of Sri Lanka sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and franchise.”

The term “franchise” seems to have been used in Article 3 without any limitation to its general meaning. However, Article 4 of the Constitution among others with regard to franchise provides that;

“The Sovereignty of the People shall be exercised and enjoyed in the following manner: -

(a)....

(b)

(c).....

(d).....

(e) the franchise shall be exercisable at the election of the President of the Republic and of the Members of Parliament, and at every Referendum by every citizen who has attained the age of eighteen years, and who, being qualified to be an elector has hereinafter provided, has his name entered in the register of electors.”

As seen above, the Local Government Elections have not been included in Article 4(e) as an occasion where franchise can be exercisable. As indicated by the learned ASG even Article 88 of the Constitution which refers to persons who have the right to be an elector states that *'Every person shall, unless disqualified as hereinafter provided, be qualified to be an elector at the election of the President and of the Members of Parliament or to vote at any Referendum: Provided that no such person shall be entitled to vote unless his name is entered in the appropriate register of electors'*. Here also Local Government Elections are not included.

As Local Government bodies such as Municipal Councils, Urban Councils were very much in existence at the time of promulgation of the 1977 Constitution, the choice to exclude Local Government bodies from the Article 4(e) seems to be a deliberate act. It was further argued that '*Expressio unius est exclusion alterius*' applies and Local Government Elections cannot be considered as part of franchise and sovereignty as contemplated in Articles 3 and 4. To support the said view, it can also be asserted, that when the language of a provision is clear and unambiguous, the Court cannot read words into a provision of the Act in interpreting the same and when the language is plain the task of interpretation does not arise. The view that franchise as contemplated in Articles 3 and 4(e) does not include voting in Local Government Elections is supported by the views expressed in the determinations made by this Court in **Pradeshiya Sabhas (Amendment) (1996)** [Decisions of the Supreme Court on Parliamentary Bills(1991-2003)Volume VII 67], **Local Authorities (Special Provisions) Bill and Local Authorities Elections (Amendment) Bill (2010)** [Decisions of the Supreme Court on Parliamentary Bills(2010- 2012) Volume X 17], **Local Authorities Election (Amendment) Bill (2016)** [Decisions of the Supreme Court on Parliamentary Bills (2016- 2017) XIII 16].

However, one can form a counter argument that the term franchise in Article 3 has a wider meaning even to include voting in local government elections or any other public election and exercise of franchise as expressed in Article 4(e) is not exhaustive and to limit it to voting in Presidential election, Parliamentary election and Referendum the Court has to insert the word "only" to the said provision which is not the task of the Court. At this juncture, it must be stated that there are certain decisions that favoured the view that the term franchise in Articles 3 and 4(e) include the voting in other elections such as Local Government Elections. In **Local Authorities (Special Provisions) Bill (2003)** [Decisions of the Supreme Court on Parliamentary Bills (1991-2003), the Court rejected the argument of the learned ASG who appeared in that case that the franchise in relation to Local Authorities does not come within the purview of Article 3 as the Constitution has to be looked at as an organic whole and its terms cannot be fixed to meaning that they may have had at the time of enactment. The Court also found that the Local Authorities, especially after the 13th Amendment had acquired constitutional recognition. However, it should be noted that this decision has not considered the previous decision made in **Pradeshiya Sabhas (Amendment) (1996)** (Supra). Furthermore, this decision in **Local authorities (Special Provisions) Bill (2003)** (Supra) had been considered in **Local Authorities (Special Provisions) Bill and Local Authorities Elections (Amendment) Bill (2010)** (Supra) and have not been followed as the view expressed

in relation to Article 3 appears to have been considered as obiter. Anyhow it appears the decisions such as **Twentieth Amendment to the Constitution Bill** SC (SD) No.20/2017 to SC (SD) 32/2017, **Wijesekara v Attorney General** (2007) 1Sri L R 38, **Mohamed Hussain Hajiar and Others v Election Commissioner of Sri Lanka and Others** SC FR Application 35/2016, SC minutes 15.12.2017, appears to be decisions that considered Provincial Council elections and Local Authority Elections as elections that fall within the purview of franchise contemplated in Articles 3 and 4 of the Constitution.

The learned ASG, referring to the decision in **13th Amendment to the Constitution Bill (1987)** [Decisions of the Supreme Court on Parliamentary Bills (1987) Volume III 19], and **Twentieth Amendment to the Constitution Bill (2018)** [Decisions of the Supreme Court on Parliamentary Bills (2018) Volume XIV 67] strenuously argues that if franchise contemplated in Articles 3 and 4 of the Constitution is extended to include other elections such as Provincial Council elections and Local Authority Elections, those Provincial Councils and Local Authorities become sovereign bodies and cannot be abolished by the central authority, namely the President and the Parliament, and as such, such extension is repugnant to Article 2 of the Constitution which declares the Republic as a Unitary State. I must admit there is substance in this argument as I observe that the exercise of sovereignty in relation to powers of government as reflected in Article 4(a)(b) and (c) is co-related to the exercise of franchise referred to in Article 4(e).

In my view all these aspects need not be considered and decided in these applications filed in terms of Articles 17 and 126. These are not applications to determine whether a Bill should be passed by a special majority or by a referendum or what is included in the right to exercise franchise. These applications filed before this Court have been filed under Article 17 and 126 praying for relief for the infringement of fundamental rights. It is true that sovereignty includes fundamental rights. No provision in Chapter III of the Constitution directly states that violation of right to franchise is a violation of a fundamental right. Whether there is a breach of right to franchise as contemplated in Articles 3 and 4 or not, this Court has to consider the violation in terms of fundamental rights as guaranteed in terms of Chapter III of the Constitution. Even if there is a violation of right to franchise what should be decided is whether such violation falls within the provisions found within Chapter III of the Constitution such as provision for equal protection and freedom of expression. The Petitioners have pleaded that denial of their right to vote or to contest in the Local Government polls 2023 falls within Articles 12(1), 14(1)(a) and 10 of the said Chapter. Thus, in my view it is not necessary to find whether the alleged

facts violate the franchise as contemplated in Articles 3 and 4. What is necessary is to adjudicate whether there is a violation or imminent violation of fundamental rights guaranteed under the said Chapter III of the Constitution.

However, some Petitioners also pray for a declaration in terms of Article 10 of the Constitution, which states that '*Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or adopt a religion or belief of his choice.*' This Article relates to a person's freedom of thought, conscience, religion or beliefs and his freedom to have or adopt such belief according to his own choice. The denial of one's right to vote at an election or his right to stand as a candidate is difficult to be considered as denial of his thoughts, conscience or belief or his choice, but only as a denial of the expression of his thoughts, conscience or belief or choice. Irrespective of the fact whether the election is held or not his thoughts, conscience, beliefs or choice will remain. Thus, in relating to the facts revealed in these applications, I see no reason to consider a violation under Article 10 of the Constitution.

For the reasons discussed above, these applications will be considered to see whether there is any infringement of fundamental rights guaranteed under Articles 12(1) and 14(1)(a) of the Constitution by one or many of the Respondents named in the Petitions owing to the failure to hold the Local Government Election 2023.

Analysis as to the alleged violation of Fundamental Rights under Article 12(1) and 14(1)(a)

The Election Commission, which consists of five members appointed by H.E. the President on the recommendation of the Constitutional Council, and one among them is appointed as the Chairman by the President, is established in accordance with the provisions of Article 103 of the Constitution. In terms of Article 104, the quorum for any meeting shall be three members and the Chairman has to preside at the meetings but in his absence the members present have to elect a member to preside. The decisions of the Commission shall be by a majority of the members present and voting at the meeting at which the decision is taken, and in the event of equality of votes, the Chairman or the member presiding at the meeting shall have a casting vote.

It appears that the learned ASG's attempt was to convince the Court that for a meeting to be valid, the members must physically meet at one place and for every decision whether there is a division of views or not a vote must be taken and recorded. Furthermore, the learned ASG referring to other similar and parallel provisions relating to other constitutional bodies such as

National Police Commission, National Procurement Commission, Public Service Commission, Judicial Service Commission and Constitutional Council etc. states that the Election Commission has to take decisions strictly in terms of Article 104(2)(b) and no deviation can be permitted. In the modern world, meetings can be conducted using technology and participants need not physically meet at one place. The terms in the Constitution shall not be fixed to a meaning that may have had at the time of enactment. If not, it may deny the benefit of efficiency with the ongoing development in other spheres. What is necessary is a meeting with a quorum to take decisions. On the other hand, voting arises only when there is a contest or difference of views or opinions. If the decisions are unanimous, I do not see any need for a vote and recording the results of the vote, other than the recording of the unanimous decision. The Constitutional provisions with regard to decision making is not to make the procedure cumbersome and inefficient but to make the decisions transparent and sound. On the other hand, all official acts can be presumed to have been done properly. Hence, in my view, if the decisions are unanimous, not taking a vote or not maintaining a record as to the result of vote relating to such decisions are not acts in breach of the provisions in Article 104(2)(b). On the other hand, it is questionable whether the Respondents for whom the learned ASG appears have pleaded the above grounds in their objections. It is true that in the objections filed in SC FR 69/2023, among other things the Secretary to the Ministry of Finance in reply to the averments in paragraphs 4,5,6 and 7 of the Petition in that application, has averred that the 4 to 7th Respondents (then members of the Election Commission sans Mrs. P S M Charles) alone are not mandated or vested with power under the law to make the decisions that they claimed to have made, and such decisions are bad and invalid in law without having constitutional sanctity as they do not appear to have been made by the Election Commission, and further that such decisions have not been shown to be quorate decisions- vide paragraph 12 of the affidavit dated 22.06.2023 in SC FR 69/2023. In fact, what has been marked through those paragraphs of the Petition in that application are the documents marked P2, P3, P4 and P5, namely the Gazette notifications in Gazette No.2311/26 dated 21.12.2022 mentioned above (Gazette notifying the appointment of returning officers and the assistant returning officers), Gazette notification No.2312/44 dated 29.12.2022 mentioned above (Gazette notifying the relevant number of candidates for each Local Authority and the amounts of deposits) and two notices issued by the Commissioner General of Elections on the direction of Election Commission announcing that notices calling for nominations for Local Authorities Election 2023 for 340 Local Government Authorities (excluding Elpitiya) were being displayed, and nominations would be accepted between 18.01.2023 to 21.01.2023 and election deposits would be accepted until 12 noon 20th January

2023 (these notices have also been marked as P5 with the Petition in SC FR 79/2023 and as P4 and P5 with the Petition in SC FR 90/2023). Hence, it appears that the said challenge is made to the decision to appoint returning officers and assistant returning officers and to the decision to issue notices in terms of the Local Government Elections Ordinance, as amended. Those tasks were tasks that were entrusted to the then Commissioner of Elections and now appears to be the tasks of the Election Commission, as in terms of Article 104B. It is the duty of the Election Commission to conduct Local Government Elections. Article 104F of the Constitution now directly confers on the Commission the power to appoint returning officers and assistant returning officers.

Before I delve into the issue whether there was a quorate decision to do the publications of aforesaid notices in gazettes, it is worthwhile to mention the affidavit of Mrs. P.S.M Charles dated 20.11.2023, who was a member of the Commission from about November 2022 to 26th January 2023, filed in SC FR 90/2023. There she avers as follows;

“I state that I have not participated at any meeting of the Elections Commission of Sri Lanka wherein the members of the Commission resolved to call for nominations to hold elections in terms of the Local Authorities Elections Ordinance (as amended) during the year 2022 or 2023 or take any step with regard to specifying the dates and times of accepting deposits and /or nominations in respect of an election held in terms of the Local Authorities Elections Ordinance (as amended).”

I further states that I verily believe that if any such decision had been taken by members of the Elections Commission such decision could not have been taken at a duly convened and constituted meeting with a proper quorum.”

In reply to the above affidavit, the Commissioner General of Elections Saman Sri Ratnayake has filed an affidavit dated 04.12.2023 along with documents marked 11R1 to 11R33. 11R1 to 11R 11 are the attendance sheets of the 61st to 71st meetings of the said Commission held on 15.11.2022, 28.11.2022, 08.12.2022, 20.12.2022, 23.12.2022, 29.12.2022, 03.01.2023, 09.01.2023, 11.01.2023, 13.01.2023 and 18.01.2023 respectively. The aforesaid member P S M Charles, have not attended the meetings held on 23.12.2022, 29.12.2022, and 13.01.2023. However, on all days mentioned above at least four members have participated and as such any decision made on those meetings are quorate decisions. 11R 13 to 11R 24 are the minutes of the meetings held on those days mentioned above and those have been tendered along with some commission papers (some of them bears a date prior to the meeting date), which appears

to have submitted for approval during the said meetings. Some hand written endorsements on those commission papers indicate that, even though those commission papers bear a different date, the decisions relating to them were taken on the date of the meeting. Thus, all the decisions found in those minutes are quorate decisions and among them are the decisions to appoint returning officers and assistant returning officers and the decisions relating to publication of aforesaid notices – vide 11R 13 which contains the decision ECP/22/61 (6), Commission Paper dated 14.11.2022 bearing said No. ECP /22/61(6) which seeks the approval, Commission Paper No. ECP/64/10 dated 19.12.22 and decision taken on that in 11R 16 on 20.12.2022. It must be noted that said P S M Charles has attended those two meetings -vide 11R1, 11R4. It appears that P S M Charles has deliberately misrepresented facts to this Court through her affidavit.

Moreover, as per Article 104A, subject to the fundamental rights jurisdiction under Article 126, writ jurisdiction under Article 104H and jurisdiction over any Presidential Election Petition and Referendum Petition under Article 130 given to the Supreme Court and jurisdiction over election petitions given to the Court of Appeal under Article 144, decisions and directions of the Election Commission have been made final and conclusive and no court is empowered to question such decisions. Making such decisions and directions subject to the writ and fundamental rights jurisdiction the Constitution itself has recognized them as administrative or executive decisions and directions. What is more important is that, even though, the learned ASG challenges the validity of the Decisions of the Election Commission as aforesaid, there is no material before us to show that any writ application has been filed to quash such decisions under Article 130 of the Constitution. As these are fundamental rights application, if there is any allegation that any decision of the Election Commission is violative of fundamental rights, Court may have jurisdiction in terms of Article 126 to invalidate such decisions or to make remedial measures if this Court finds such violations. However, there is no such application before us alleging that such decisions or directions of the Election Commission have violated the fundamental rights of anyone. Now what the learned ASG had endeavored in this application was to get relief that he could have prayed in a writ application without filing such application in terms of Article 130.

The learned ASG challenges in his submissions the credibility of the members of Election Commission as they have not produced the necessary material to show that their decisions were legally valid at the outset with their objections. I do not see any necessity to do that as they were only respondents who were responding to the Petitioners' applications which did not challenge the validity of the decisions and directions of the Elections Commissions.

For the reasons given above, this Court cannot accept the arguments of the learned ASG that challenged the validity of the decisions or directions of the Election Commission on the basis that those decisions or directions were not made in accordance with Article 104.

The learned ASG also argues that the Election Commission was unreasonable in its decision making, thus departed from the principles of reasonableness in the conduct of its administrative and constitutional functionality. As per the objections filed Secretary, Ministry of Finance, this position appears to have been taken up in the objections owing to the following grounds;

- **Lack of coordination with the relevant stake holders in advance;** In this regard it is stated in the objections that Section 25 of the Local Authorities Elections Ordinance requires the general election of the members of a Local Authority to be held within a period of six months preceding the date on which the term of office of the members, who are to be elected, is due to commence and the said period of six months commenced on or around 20.09.2022. Since Local Authorities Elections is a process that requires advance preparation as it involves the largest number of candidates, and it is necessary to consult and coordinate with relevant stakeholders in advance in the exercise of the duties, powers and functions of the Election Commission, which would only constitute as reasonable conduct by a constitutional functionality tasked with the holding of a nationwide election.
- **Belated communication of the holding of Local Government Election to the Secretary, Ministry of Finance;** In this regard he highlights that he did not receive any communication from the Elections Commission regarding the Local Authorities Elections from or around 20.09.2022 until he received a letter dated 09th January 2023 from the Chief Accountant on behalf of the 3rd Respondent.
- **The Election Commission should have considered that the economy of the Country was in dire straits;** In this regard he has stated that the said state of affairs was in the public domain and was known by the general public at large. To support this view, he has marked a report on issues in managing government cash flow amidst the ongoing serious economic crisis marked 1R1 prepared by him.

- **Not adverting the attention of the national treasury to prioritized budgetary allocations in time;** In this regard it is stated that the Election Commission did not advert the attention of the national treasury to the need to have prioritized a budgetary allocation for a national election, as opposed to a budgetary estimate, in the course of the budget deliberations that were in process between September - November 2022. It is again stated that even though the process for the Local Authorities Elections could have commenced on or around 20.09.2022, the Secretary to the Finance Ministry received a communication for the first time only from the Chief Accountant on 09.01.2023 setting out some expenses associated with the Local Authorities Election and requesting an imprest, which was followed by another communication dated 10.11.2023, requesting to attend a meeting on 11.01.2023 to discuss ‘Management of Election Expenses’ with the Finance Ministry.(the said communications have been marked as 1R2 and 1R2A)
- **Failure of the Election Commission to consider what was explained in the meeting held on 11.01.2023;** In this regard the Secretary, Finance Ministry states that a senior officials of the Treasury attended the aforesaid meeting on 11.01.2023 with the Election Commission and explained to the Election Commission the serious challenges and difficulties faced by the Treasury in view of the depleted budgetary position on account of country's poor economic and fiscal performance over the preceding few years and alleges that the Election Commission did not appear to have taken a decision pursuant to such representations. In support of this stance, he has brought this Court’s attention to the documents marked by the Chairman of the Election Commission as 4R8, 4R11, and 4R12, which are the letters addressed to the Chairman of the Election Commission by the Governor of Central Bank, Chairman of Ceylon Petroleum Corporation and Chairman of the Electricity Board respectively, which reflects the economic crisis the country was facing during the relevant time and report prepared by him marked IR3 and its annexures marked A to H.

On the above grounds, the Secretary to the Ministry of Finance has stated that there is a clear departure from the principle of reasonableness in the conduct of an administrative and constitutional functionality such as the Election Commission.

However, when there is a statutory and constitutional duty to hold Local Government Elections, when the relevant authority taking steps to hold the said election one cannot say that it is unreasonable. On the other hand, when allocation of money has been made through the budget,

the members of the Election Commission could have legitimately expected that the money would be released and therefore they cannot be blamed for commencing the process and endeavoring to continue it for which they are statutorily bound. It is the Secretary to the Ministry of Finance and Treasury who manned the treasury who should foresee in advance the difficulties in releasing money under various imprests and take necessary precautions and take steps to set priorities in advance according to law as to the expenditure on the available funds with the approval of the relevant authority which is responsible to manage the public finance allocated by the Budget. It appears the budgetary allocation was done very close to the requests for funds made by the Election Commission.

Other than some directions that was issued through circulars to control expenditure there was no indication that there would be a discontinuation of releasing funds for the intended tasks as per the budgetary allocation. Through Cabinet Decisions, such prioritization was given to certain areas of expenditure only after the election process started. In such a situation it cannot be said that the commencement of said election process was unreasonable as the Commission was doing its statutory duty. In fact, it is seen that the Secretary to the Treasury has released certain amount of money to the Election Commission, Government Printer and the Police Department – vide paragraph 7(t) of his own Affidavit. Now there is an attempt to say that to settle the commitment already made those money had to be released and furthermore, that there was a possibility that Election Commission could have issued a direction which may result in a criminal liability if that money was not released. If there were no funds to hold an election and if it was an impossibility, it could have been clear ground to consider as the law does not expect to do the impossible. As the treasury is involved in preparation of budget, officers of the treasury should have an idea when these money may be asked for the allocated purposes. In such a situation, it is the treasury that should have conveyed to the Election Commission with regard to the non-availability of funds before the due time arrived to commence its statutory duty. Election Commission cannot foresee how the treasury act in relation to the allocated funds. If there was no money to complete the election process, money is wasted if only a part of the allocation was released and thereafter the releasing the balance needed for the intended task is stopped. If there were no funds, it is the treasury that would have been more vigilant to take precautions beforehand than blaming the Election Commission. Thus, the treasury was not vigilant enough to see the danger in spending the funds allocated as per the budget would cause immense hardship to the economy and take necessary steps beforehand prior to the relevant

event occurred or commenced. It now tries to blame the Election Commission for commencing to take steps to do its statutory duty as unreasonable. That cannot be accepted.

Furthermore, the learned ASG has relied on many other new grounds in his lengthy written submissions that were not stated in the objections such as not considering the delimitation process, effect of on-going election law reforms etc. to say that the Election Commission was not reasonable. Even the Counsel appearing for the Prime Minister and the Minister of Public Administration and Local Government also has filed written submissions referring to this delimitation process and law reforms but without filing any objections. Moreover, while asserting that matters should be looked into as at the time of *litis contestatio* was reached, i.e. at the time of the closure of pleadings, the learned ASG has endeavored to convince this Court that the Election Commission / its members and/or officials have acted ultra vires in their communications with the Secretary Treasury, Government Printer, IGP and other authorities as well as that the Election Commission acted ultra vires the Local Authorities Elections Ordinance which have not been raised through objections filed on behalf of the parties he appears, for other parties to respond. However, it is my view that it is not proper to decide these applications on matters which were not properly placed before this Court through their pleadings as the opposite party could not have placed their case in response. Therefore, I do not intend to decide on those new grounds made during submissions which are not based on the objections filed.

Whether such grounds were averred in the objections or not, as said before, decisions, directions and acts of the Election Commission have a final and conclusive effect and its members and officers have an immunity from being challenged in Courts for their acts done in good faith subject to the fundamental rights jurisdiction, writ jurisdiction and jurisdiction over Presidential Elections and Referendum given to this Court and Election Petition jurisdiction given to the Court of Appeal subject to an appeal to this Court. No material has been placed before this Court to show that any writ application has been filed challenging such decisions, directions or regarding any communication etc. These are fundamental rights applications and no one has challenged those so called unreasonable or ultra vires acts, decisions or directions or communications have infringed any fundamental rights. If there were such applications claiming those as violative of fundamental rights, this Court may have jurisdiction in terms of Article 126 to invalidate such decisions or to make remedial measures if this Court finds such violations. However, there is no such application before us alleging that such decisions or directions, acts or communications of the Election Commission or its officers have violated fundamental rights of anyone. As stated above the learned ASG cannot be allowed to challenge the decisions,

directions, acts or communications of the Election Commission in this manner. As those decisions, directions, acts or communications have not been challenged in terms of the Constitution, they are final and conclusive.

At this juncture, it is necessary to refer to the Article 104(B)(2) of the Constitution which reads as follows;

“It shall be the duty of the Commission to secure the enforcement of all laws relating to the holding of any such election or the conduct of Referenda and it shall be the duty of all authorities of the State charged with enforcement of such laws, to co-operate with the Commission to secure such enforcement”

Above makes it clear that every authority of the State charged with enforcement of any law relating to the holding of any election has to co-operate with the Election Commission to secure such enforcement. Thus, in my view, the other limbs of the executive arm of the government have to cooperate with the Election Commission in conducting the election once the process commenced. If the Secretary, Ministry of Finance observed defects, irregularities in acts, communications, decisions and directions of the Commission or its officers, is it not his duty to act in co-operation and place it before the Commission in writing and get errors rectified (if any) to get things going for a successful completion to protect voting rights of the people? I cannot consider that keeping such errors (if any) in secret as a reason for not providing funds and taking up it in defense at the last stage of proceedings before this Court as cooperation. On the other hand, after bringing it to the notice of the Election Commission, if there was no favourable response to correct any error (if any) the Secretary, Ministry of Finance could have sought legal remedy through a writ application. **Administrative Law by H.R.W. Wade & C.F. Forsyth**, 11th Edition at page 520 states that “*Like the other prerogative remedies, it is normally granted on the application of a private litigant, though it may equally well be used by one public authority against another.*” In this regard, the Learned P.C who appeared for the Election Commission has brought this Court’s attention to the **Colombo Port City Economic Commission Bill Determination SC SD Nos 04/2021,05/2021, 07/2021 to 23/2021** which held that “*even where an act of a public authority is ultra vires and a nullity, for remedial purposes the illegality must be established before a court. As stated by Wade and Forsyth, Administrative Law, 9th Ed. Indian Edition, page 281the Court will treat an administrative act or order invalid only if the right remedy is sought by the right person in the right proceedings.*”

As pointed out earlier, H.E. the President is the Minister of Finance, and when the requests are placed through the Secretary, it can be argued that he too has a duty as the President to ensure the creation of proper conditions for the conduct of free and fair elections. On the other hand, as said before, aforesaid positions taken up by the Secretary, Ministry of Finance somewhat taints the genuineness of the stance taken in defense that there was an impossibility due to lack of funds.

The learned ASG has taken up the position that the application No. FR139/2023 is time barred. However, prayer G, H and I in the Petition pray for a declaration with regard to continuing violation. As far as the right to vote is delayed, there will be a continuing violation till it is exercised. Thus, the application cannot be considered as time barred.

It appears that some Petitioners (vide written submissions in SC FR 69/2023) allege that the IGP and Government Printer acted in a manner to prevent the election being held. In this regard, it is brought to the notice of Court that the estimate expenditure presented by the Police Department was many folds greater than the amount spent by the same Department at the elections held in the year 2020. It is also said that the Government Printer required Rs. 400Mn and demanded upfront payment for printing ballot papers and other material when the previous practice was to do it on credit basis and the treasury to pay after the printing was completed. It is also said that the Government Printer refused to print ballot papers till the necessary security is provided by the police. However, the mere escalation in the estimates cannot be considered as a step taken to prevent the election. It depends on the economic situation of the country and inflation existed at that time might have caused the escalation in the estimates. Even the Government Printer asking for security or upfront payment per se cannot be considered as an act of sabotaging the election as she is subject to the circulars such as circular No.02/2023 marked 3R4C in SC FR 90/2023 issued by the superior officer, the Secretary to the Ministry of Finance and Secretary to the Treasury. In fact, in 3R10B filed in the same brief, she has revealed the difficulty her department faced with paying salaries and allowances. In her affidavit dated 19.05.2023 filed in SC FR 79/2023 at paragraphs 19 (l) and (m) she had averred about this difficulty and how, if the necessary finances were not forthcoming, it could have affected the limited financial resources of her department. This is where I observe that the Election Commission was also at a failure in planning and exercising its powers. As per Article 104 B the Commission shall exercise perform and discharge all such powers, duties and functions conferred or imposed or assigned to the Commission or Commissioner General by the Constitution and by law relating to the elections. In terms of Article 104(B)(2), It shall be the

duty of the Commission to secure the enforcement of all laws relating to the holding of elections and it shall be the duty of all state authorities to cooperate with the Commission. Article 104GG make the refusal to cooperate and / or failure to comply with direction of the Commission punishable. To secure a free and fair election and enforcement laws relating to such election, there should be money for the necessary expenditure, ballot papers and protection for the printing of ballot papers and conduct of the elections I do not think the task of the Commission is to be a mere intermediary between the treasury and any department when such department tender an estimate to pass it to the treasury. To secure the enforcement of laws relating to holding of elections proper management of funds also is necessary. Otherwise, departments assisting the holding of elections may be able to tender exorbitant estimates which would in the long run in a poor economy sabotage the holding of elections. Thus, it is necessary for the Election Commission to take necessary steps to assess the estimates tendered by others than complaining the estimates are high or allowing others to complain that the estimates tendered by such departments are unprecedently high.

I do not see any bar for the Election Commission to obtain the cooperation of a suitable department of the government to assess such estimates. However, other than requests made, I cannot find any directions given by the Election Commission either to any department or the Secretary to the Treasury. As per the affidavits filed before this Court the Election Commission or its Chairman moves for necessary orders on various officials including the Secretary to the Treasury and Ministry of Finance which indicates that the Commission believed that the holding of election was not an impossibility due to lack of funds but a possible task, but the Commission failed in issuing necessary directions to the relevant authorities when necessary. It is also pertinent to note that in terms of Article 104 C, the Commission can notify the IGP of the facilities and the number of Police officers needed. The IGP shall make such facilities and police officers available to the Commission. It is the Commission which should deploy the said facilities and police officers who are responsible to and act under the direction of the Commission. As per the documents marked 6R10A,6R9B and 6R9A in SC FR 79/2023, it appears rather than Election Commission deploying the necessary police officers, it has been left to the relevant department head to ask for police protection first. In the aforementioned backdrop it is questionable why the Commission did not use its powers to issue directions, if necessary, to get the required cooperation. Since the Constitution does not give other departments any power as contained in Article 104B (1) and (2), it should be the responsibility of the Commission to arrange for protection and financial assistance including what should be

done on credit basis after discussing with relevant authorities other than relevant department heads to seek for such assistance saying that it was the practice on previous occasions. Thus, I do not see any mischief in asking money from the Election Commission for the expenses. However, aforesaid facts indicate the failure of the Commission to use its powers.

It appears from the objections that the Commission expected the other Departments to do their tasks on credit basis to considerable extent as it was done on previous occasions. This itself shows that the Commission did not plan the process of holding elections with a proper understanding of the then existing situation of the Country. Not only the reports and documents filed by some of the Respondents, some documents filed by the Chairman or the members of the Commission itself indicate that there was an economic crisis in the Country. On the other hand, it was in the public domain that the Country was bankrupt or at the verge of bankruptcy which means that the country was unable to pay its debts. Even in **Dr. Athulasiri Samarakoon and Others v Ranil Wickremasinghe, Minister of Finance** (SC/FR/195 and 212/2023, SC Minutes of 14.11.2023) this Court recognized the economic crisis the country was going through. In such a backdrop, planning to start the process of holding Local Government Elections expecting other departments to do their service on a credit basis itself show lack of proper organization of the event by the Commission. It should have foreseen that the funds are necessary for the successful completion of the election process and should have first made arrangements to obtain the necessary funds and or credit for necessary tasks than leaving other department heads to spend money allocated for their departments or take the risk of doing tasks on credit basis. The conduct of the Election Commission indicate that it did not accept the view that the holding of election was not an impossibility. If so, it should have issued directions to the relevant authority to provide necessary funds or to issue guidance to authorize the relevant departments to execute the necessary tasks on credit basis. If the Commission believed that there was a lack of sufficient funds as indicated by the communications with the Secretary to the Treasury and Ministry of Finance, it could have directed the said Secretary to take necessary steps to secure necessary funds in accordance with the law. If it is a real situation of no funds, one can say it is a policy decision to be taken by the representatives of the people how to manage the funds available giving priorities as full control of public finance lies with the Parliament. By writing to the Hon. Speaker at the end, it appears that the Commission also came to the conclusion that the solution remains in the Parliament. In the above backdrop, I do not think that the Election Commission can be absolved fully from liability as it failed to exercise its strength and powers fully to make the election process a success. However, the main issue

revolves around the failure to release the budgetary allocation for the holding of the Local Government Elections, which will be discussed below in this judgment.

It is pertinent to note that when the Secretary to the Ministry of Finance who was represented by the learned ASG filed his objections, to decline liability, he has limited his objections, if summarize, mainly to the following areas, namely;

- Certain decisions of the Election Commission are not lawful and quorate decisions made in terms of Article 104. I have already dealt with this issue above in this judgment
- Election Commission was unreasonable in its decision making and thus, departed from the principles of reasonableness in the conduct of its administrative and constitutional functionality. I have already dealt with this aspect above.
- Depleted budgetary positions and inability to secure and provide funds for local government elections due to the ongoing serious economic crisis which caused problems with regard to government cashflow operations resulting the Cabinet to take decisions to prioritize certain expenses and to issue circulars to limit expenditure to certain areas identified as essential per those decisions and circulars.

The denial of funds for the holding of an election will naturally set a dangerous precedent which will impinge on the democratic rights of the people of this country. Thus, it may require to see whether the way the denial was done is lawful.

That there was an economic crisis in the country at the relevant time is adequately borne out by the report submitted to this Court by the Secretary, Treasury annexed to the Limited Objections in SC/FR/ 69/2023 which was made prior to the filing of these applications, and the circulars issued just prior to or in or around the time the election process commenced – Also see IR3 and annexures annexed to the Objections in SC/FR/ 69/2023. Further the said serious economic crisis has been recognized by this Court in the economic crisis case, namely **Dr. Athulasiri Samarakoon and Others v Ranil Wickremasinghe, Minister of Finance (Supra)** which acknowledged the dire state in which the economy was in as follows;

“We observe that no adequate steps had been taken to remedy the adverse repercussions on the deficit due to loss of revenue following the tax revisions, in a timely manner even when it was apparent that the changes failed to bring the expected positive outcomes.

Such failure heavily contributed and had a domino effect on the economy which ultimately collapsed bringing serious hardship to the entire society” – (page 76)

“It is common grounds that the country's economy deteriorated not overnight but over a period of time under consideration in the matters before us. It was evident from the material placed before us that the Gross Official Reserves and the Reserves of the Central Bank were depleted and had reached unprecedented low levels, creating a situation of which the effects were devastating on the entire citizenry without exception. The severe hardships the people had to suffer due to scarcities in essentials such as fuel, gas and medicines coupled with long hours of power shortages brought the lives of people to a standstill and the suffering the public had to undergo was undoubtedly immeasurable.” - (page 116)

However, one can argue that the people of this Country were experiencing the economic crisis and the knowledge of existence of it was within the public domain.

On the other hand, even if this depletion of government funds made it difficult to provide funds for the Local Government Election, it is not a fault of the Petitioners or the people of this country. Perhaps, it may not be the present Respondents who are directly and personally responsible for such depletion but understandably such deterioration of the economy has to be a result of mismanagement of the economy of the country by the persons who held the office of some of the Respondents. In that backdrop, can the State deny its liability for the violation of rights for denying the right to vote at the Local Government Election 2023 within the time period it should have been held? In my view the answer has to be in the negative.

Now I will endeavor to consider the violations of fundamental rights (if any) through the impugned conduct of one or more of the Respondents.

The Local Government Elections process could not be proceeded with after the two cabinet decisions, discussed herein before, to give priority to certain expenditure listed and included in them. One of the aforesaid two decisions that even directed that even any surplus of government income should be used in accordance with the priorities mentioned therein.

The learned ASG, while referring to the dire economic situation faced by the country and the decision of this Court in economic crisis case (*supra*), directive principles of state policy and fundamental duties, attempted in his written submissions to indicate that the parties he represents were duty bound to discharge in the manner spelt out in the directive principles in our Constitution to take every measure to avoid an aggravation of the situation to the detriment

of the people. While referring to the said decision of the “economic crisis case”, the learned ASG especially referred to page 116 which reads as follows;

“In deciding this issue, we are of the view that the respondents ought to have known the factual situation that prevailed when they assumed public office and they should have fashioned their acts and efforts to ensure that the situation is not further aggravated but resolved. On assumption of public office, it was their duty to ensure that the existing issues were addressed and resolved in the best interest of the country and take every possible measure to avoid an aggravation to the detriment of the people.”

This appears to have been cited to indicate the said Cabinet Decisions and control of government expenditure were taken to ensure that the existing issues were addressed and solved in the best interest of the country and to take every possible measure to avoid an aggravation to the detriment of the people. However, as stated in the said quoted passage, the relevant Respondents in this case also ought to have known the factual situation that prevailed in the country when they also assumed public office. Should not have they fashioned their acts accordingly even when preparing the budget. Now taking this stance only after few weeks from the budget not to go ahead as per the allocations made in the budget is questionable making it to raise concern whether timing of picking these priorities just a few weeks after the budget and passage of the Appropriation Act, is arbitrary and for some other purpose.

The learned ASG attempted to convince this Court, even though the situation of the economy was improving, full economic recovery was not yet assured and the Respondents he represented had to take every possible measure to avoid an aggravation to the detriment of people and they were responsibly and consciously taking decisions to ensure that the situation did not worsen.

While referring to the Directive Principles of State Policy in Article 27(2), highlighting the objectives in 27(2) (c), (e), (f) and (h) and the Svasti of the Constitution , the learned ASG argues that, even though the representative democracy is important, the dignity and well-being of the People is the ultimate goal to be achieved, and there is a paramount obligation placed on the State to ensure such dignity and well-being where such dignity and well-being is challenged in a time of scarce resources. He further argues that even though the Directive Principles are not justiciable, that this Court in the exercise of its fundamental rights jurisdiction have held that there is a mandatory duty on the State to act in accordance with the Directive Principles in the performance of their functions. In this regard he has brought this Court’s attention to **Ravindra Gunawardena Kariyawasam v Central Environment Authority and Others**

(SC/FR/141/2015, SC Minutes of 04.04.2019 where Prasanna Jayawardena J. at pg. 50 held “*The Directive Principles of State Policy are not wasted ink in the pages of the Constitution. They are a living set of guidelines which the State and its agencies should give effect to*”

Thus, the learned ASG contended that as mandated by Article 27(1) of the Constitution, in the process of governing the State the Parliament, the President and the Cabinet of Ministers are duty bound to ensure that the people have an adequate standard of living, the equitable distribution among all citizens of material resources, decentralization of the means of production, distribution and exchange and the right to universal and equal access to education. He further contended that measures which have been put in place to meet these objectives such as social security schemes, free healthcare and free education are invariably costly and thus a great portion of government revenue must be set aside to fund these services.

However, it must be noted that among the objectives that the State is pledge to establish, the full realization of fundamental rights and freedom of all persons is included- vide Article 27(2)(a). Further, Article 27(4) cast a duty on the State to strengthen and broaden the democratic structure of government and the democratic rights of the people by decentralizing the administration and by affording all possible opportunities to the people to participate at every level in national life in government. Slave, or a vassal or a serf in a feudal system, might have had his basic essential needs fulfilled, in contrast the dignity of people in a democratic society, with its pros and cons, highly rest on their ability to partake in governance whether it is central, provincial or local, through voting in an election. Thus, actions and restrictions placing the Local Government Election in the second or lower tier in the guise of protecting dignity of people of the country is questionable.

In the above backdrop, referring to Paragraph 7p of the affidavit of the Secretary to the Treasury filed in SC FR69/2023, filed on 23.06.2023, the learned ASG states that the government identified certain priorities with regard to the Government expenditure as follows;

- The first priority is the debt service payments, including capital repayment and interest payments which is considered as a mandatory cash flow item.

- The second priority is given to the payment of salaries, pensions and social security expenses, including Samurdhi payments, as well as payments for the elderly and differently-abled soldiers, which collectively accounted for about 28% of the total expenditure and 81% of the recurrent expenditure in 2022.

- The third priority is to provide maximum possible funds for medical supplies including those for life-threatening health conditions; to provide for day-to-day essential health needs; and, outstanding fertilizer bills to ensure food security.
- As the fourth priority, the General Treasury makes every effort to provide at least the minimum requirement for the payment of utility bills (electricity, water, fuel etc.) and other recurrent expenses, which include rent and salaries of Sri Lankan missions abroad, allowances for teachers for exam paper markings, printing of text books and similar expenses.

The Secretary to the Treasury has further averred that given the serious pressures on the cashflow and the related limitations, providing funds from the Treasury's cashflow for government capital expenditure was not considered as a priority. However, depending on the daily cashflow situation, only a limited amount of money is released specially to maintain the capital stock. The same affidavit at 7(q) also highlights that there existed demands to settle amounts of unpaid bills (around Rs. 106 billion by end 2022) either through releasing cash whenever possible or issuing treasury bonds, and that unpaid bills would have significant ramifications for key sectors such as healthcare, agriculture, fuel, food and construction, all of which are critical for the socio-economic stabilization of the country. Learned ASG contended that the above priority clearly considers and is in line with the obligations imposed on the State by the Directive Principles of State Policy. In this backdrop, the learned ASG brought this Court's attention to the two cabinet decisions which compelled the Secretary to the Treasury, to refer the request by the Chairman, Election Commission dated 07.03. 2023 marked 1R5 in SC FR 69/2023 to the Minister of Finance which conveyed to the Chairman Election Commission by letter dated 07.03.2023 marked 1R6 in SC FR 69/2023. The first Cabinet Decision dated 07.02.2023 marked as part of 1R 4A in SC FR 69/2023 approved the Cabinet Memorandum submitted by Minister of Finance marked 1R4B in SC FR 69/2023 (also see P6 and P7 in SC FR 139/2023) which contained the proposal to release imprest only for essential expenditure identified therein as mentioned above, namely 22 items identified as recurrent expenditure to be essentially incurred, expenditure related to capital development projects financed through local funds and the long overdue payments and essential services such as emergency maintenance and repairs. The 22 items mentioned above are as follows;

- i. Payment of salaries and incentives
- ii. Debt servicing
- iii. Pensions
- iv. Medical supplies of hospitals
- v. Monthly samurdhi subsidies
- vi. Financial assistance to elders
- vii. Financial assistance to differently-abled low-income receivers
- viii. Financial assistance to kidney patients
- ix. Financial assistance proposed by the Budget to be paid to those who are affected by economic difficulties.
- x. Grade 5 scholarship allowances.
- xi. Mahapola and bursaries.
- xii. Thriposha programme
- xiii. Farmers' pension
- xiv. School nutrition programme
- xv. Pre-school nutrition programme
- xvi. Payment for war heroes/disabled soldiers.
- xvii. Ranaviru mapiya rakawarana allowance
- xviii. The unpostponable electricity, water, fuel and essential telecommunication services
- xix. Food supplies to hospitals, prisons, security divisions
- xx. Payments made in terms of agreements entered into in connection with maintenance services, building rents, cleaning services, security services
- xxi. Statutory payments such as EPF
- xxii. Fertilizer subsidy

The second Cabinet Decision dated 13.02.2023, which is marked as P8 in SC FR 139/2023 along with the Petition or as part of 7R4(B) in SC FR 79/2023 along with the affidavit of the Secretary to the Treasury, appears to have granted concurrence to a proposal by H.E the President who is also the Minister of Finance. The said decision, as mentioned above, has given direction to the utilization of any surplus of government revenue that would arise in February 2023. Thus, other than essential recurrent expenditure referred to in the previous Cabinet Decision mentioned above any surplus of government revenue was to be utilized on priority basis to meet the following expenditure

- a) Purchase of paddy from farmers during Maha Season 2022/23

- b) Expenditure related to minimizing malnutrition among children and pregnant mothers
- c) Gratuity payments
- d) Settlements of outstanding bills pertaining to Decentralized Budget Programme
- e) Any other essential expenditure as found necessary and approved by the Minister of Finance, Economic Stabilization and National Policies.

With these Cabinet Decisions the Secretary of the Treasury is required to get the approval of the Minister of Finance to release funds for any other essential expenditure not covered by the aforesaid two Cabinet Decisions. Other than the requests for funds made on behalf of the holding of elections referred to in the letter marked P9 in SC FR 139/2023, after this Court made Order in SC FR 69/2023 the Election Commission has again written to the Secretary Minister of Finance to release funds in the manner described in the letter dated 07.03.2023 marked P13 in SC FR 139/2023. As such it is difficult to find fault with the Secretary to the Treasury and Ministry of Finance for not releasing further funds as he referred the requests made on behalf of the Election Commission to the Minister of Finance as reflected in the letters dated 15.02.2023 and 07.03.2023 written by the Secretary to the Ministry of Finance to the Chairman of the Election Commission marked P9 and P14 respectively in FR 139/2023. In P14 the said Secretary has specifically informed that once the approval is given the funds will be released in the manner and time mentioned in the said P14 (also see 1R6 in SC FR 69/2023). It appears such approval was never given even at the time of institution of these proceedings or at the time *litis contestatio* was reached.

The learned ASG in his submissions stressed that the priority payments laid down by above cabinet decisions relate to expenditure which is necessary to guarantee the right to life. Referring to **Janath S. Vidanage and Others v Pujith Jayasundara, Inspector General of Police** (SC/ FR/163, 165, 166, 184, 188, 191, 193, 195-198, 293/2019, SC Minutes of 12.01.2023) he highlighted that a person's right to life is not negotiable and the inability of the State to provide for such secure environment is clearly in breach of and in violation of the constitutional mandate and the privilege provided to a citizen of this country under the Constitution. The learned ASG further argued that if the right to life is not protected other fundamental rights, including rights guaranteed under Articles 10, 12(1) and 14(1)(a) of the Constitution would be meaningless. Referring to Section 9(3) of the Pradeshiya Sabhas Act, Section 27(3) of the Urban Councils Ordinance and Section 170(4) of the Municipal Councils Ordinance, the learned ASG endeavored to indicate that there are mechanisms to provide the

services of the relevant authorities even if the Local Government Elections are not held. Further the Central Government remains duty bound and capable to provide such services. It appears what is intended to indicate by such submissions is that even there is no Local Government bodies, necessary services can be provided through other mechanisms. However, such services would be decided, planned and manned by the bureaucrats without any involvement of the peoples' representatives. Anyhow, this Court does not intend to question the State's incumbent responsibility to safeguard right to life of its citizenry. If the life standards of the Citizens came to a such a precarious situation it was not the fault of the Citizenry but due to the handling of the economy by the executive arm of the State, even though one may argue that the present respondents are not responsible but their predecessors. Thus, the State cannot avoid responsibility as its not anyone else's fault. On the other hand, this Court does not intend to analyze and decide the economic decisions to curtail certain payments and giving priority to certain payments were correct or wrong or good or bad. This Court may not have the expertise to do such a task. Other than certain reports presented by the Secretary to the Ministry of Finance and Treasury, no party has tendered any analysis from an independent expert showing inflow and outflow of money to the government coffers and the possibility of funding the Local Government Elections. However, this does not hinder this Court's ability to assess whether there was any arbitrariness or capriciousness in the executive action in selecting the priorities without considering the funds for Local Government polls.

In this regard, while quoting from **Baker v Carr** 369 U.S. 186(1962), **Nixon v United States** 506 U.S. 224 (1993), **Vieth and Furey v Jubelirer et al** 541 U.S. 267 (2004), **S.R. Bommai v Union of India** [1994] 2 SCCR 644, **V. Venkateswar Rao (V.V. Rao) v The Government of Andhra Pradesh** (Supreme Court of India Minutes of 05.10.2012), **A.K. Kaul & another v Union of India** (1955) 4 SCC 73, **N.K. Singh v Union of India** (1994) 6 SCC 98, **Kachchh Jal Sankat Nivaran Samiti v State of Gujarat and Another** (2013) 40 SCD 555, **M. Ismail Faruqui Dr. v Union of India** (1994) 6 SCC 360, **Premachandra v Major Montague Jayawickrema and Another** [1994] 2 Sri LR 90 it is argued that the doctrine of political question applies and this Court may decline judicial review wherein there are no judicially discoverable and manageable standards where a political judgment has been made based on assessment of diverse and varied factors or where there are matters which are not susceptible to the judicial process.

I do not intend to deliberate in detail with regard to the submissions made referring to political question doctrine as I have already stated above, this Court is not going to decide on the

correctness of the decision to prioritize certain expenditure or to decide whether they are good or bad decisions due to the lack of expertise this Court has to decide on economic decisions but this Court is not barred in deciding whether such decisions were made arbitrarily or capriciously in their decision making process. If the Petitioners challenge the correctness or inappropriateness of the said priorities of expenditure, after all it is their responsibility to take steps to prove such inappropriateness.

Perhaps, instead of getting an interim relief of which indirect intention appeared to be the release of funds and which became fruitless at the end, if the Petitioners asked interim relief to call for reports with regard to inflow and out flow of funds to the government coffers and availability of or non-availability of foreign resources or local resources of funding, they could have tendered an independent expert evidence through further pleadings as to the possibility of holding elections against the priorities selected by the Respondents represented by the learned ASG. If that happened, this Court would have been in a position to express its opinion with regard to such decision with the help of such expert evidence.

Some of the Petitioners have brought this Court's attention to the sums of money that were spent on the Independence Day and the 'Janaraja Perahara'. This is not an application to see whether such spending was prudent, correct or necessary. One may argue in a multi-cultural society where people are divided to various sects, functions common to all sects has to be celebrated even at a time of crisis to maintain national unity. Even one may be able to indicate that even if the money spent on such events is saved it is not sufficient to raise the money needed for the conducting of Local Government Elections and spending money on a task which cannot be financed fully in the given circumstances is a waste of limited financial resources the country had at the given time. However, it must be noted that at the commencement certain amounts of money was released as mentioned before for this election purposes and it might have also been a waste of resources. On the other hand, no facts have been placed before this Court to indicate the amounts spent on those functions on previous occasions to see whether there also the State has minimized the money to be spent. However, this type of spending of funds indicates that on certain occasions the executive did not limit its expenditure to the restrictions they themselves have created in the guise of managing limited resources available. This raises the question whether, when the right to vote of the eligible voters throughout the nation is in breach, not considering it as one area that should be given priority or at least one should be approved when the request for funds were made, is arbitrary or not. It must be noted in the Cabinet Memorandum or in the relevant Cabinet Decisions it is not contemplated at least

a date or time when the funding for the said election can be accommodated. Further, there appears to be no response when the request for further funds for approval was placed before the Minister of Finance who is H.E the President of the Republic as per P14 in SC FR 69/2023.

It is the duty of the H.E. the President in terms of article 33(c) of the Constitution to ensure the creation of proper conditions for the conduct of elections at the request of the Election Commission. It appears that now the Respondents represented by the learned ASG takes up the position that there was no request from the Election Commission per se to the H.E. the president. However, when H.E. the President and the Finance Minister is the same person holding different portfolios and when H.E. the President can claim immunity even for his acts related to different portfolios, in my view it is artificial to separate the two functions and say that there was no request place before H.E. the President. It is also pertinent to note that as explained below in this judgment when the Cabinet Memorandum was presented to the Cabinet for approval it did not reveal any matters that will appraise the Cabinet with regard to its effect on the ongoing election process. The conduct of the Minister of Finance establishes arbitrariness in decision making.

It is argued that there has been only a delay which is reasonable considering the economic situation of the Country and it is only denial and inordinate delay that would amount to violation of fundamental rights. In this regard, the learned ASG has quoted **Karunathilaka and Another v Dayananda Dissanayake, Commission of Elections and Others** (Case No. 1) [1999] 1 Sri LR 157 which refers to the conduct of the 1st respondent in that case resulted in a grossly unjustified delay in the exercise of the right to vote, in violation of Article 14(1)(a), **Thavaneethan v Dayananda Dissanayake Commissioner of Elections and Others** [2003] 1 Sri LR 74 which found the total denial which was not a mere delay as an occasion of violation of Article 14(1)(a), **Wijesekera v Attorney General** [2007] 1 Sri LR 38 (Demerger case) which considered a situation wherein the election for the North and East Provinces had been postponed from time to time from 1988 up to the date of the case as a denial of the right which caused a continuing infringement of Article 12(1) of the Constitution, **Mohamed Hussain Hajiar Muhammed and Others v Election Commission of Sri Lanka and Others** (Supra) where there was a delay of two and half years.

It appears that the learned ASG's attempt is to indicate that there was only a delay or a postponement at the time of *litis contestatio* was reached but in my view, this is far from reality. As per the aforesaid two Cabinet Decisions reflected in documents marked P6, P7 and P8 in

SC FR 139/2023 and as per the response of the Secretary to the Ministry of Finance found in P14 in the same brief, a situation has arisen that till the Minister of Finance decides and approve the funds necessary for the holding of the Local Government Elections, the date of holding the election has become indefinite. As stated in the case **Mohamed Hussain Hajiar Muhammed and Others** (Supra) there is a legitimate expectation of the people to elect members of Local Authorities of their choice. On the other hand, voting in an election is expression of that choice and a choice of a voter may change with the time. If it is denied during the time when it was to be expressed as envisaged by law that choice may be forever lost or replaced by a new choice. If the time to express such choice is left to the executive who also wields political authority, such authority may naturally select a time which is more suitable to the executive. Even a candidate may lose his opportunity to be selected due to the change of choice of the people with the lapse of time. In that backdrop creating a situation that the election should be held when the Finance Minister decides to approve funds appears to be itself arbitrary when Article 15(2) envisage any restriction in relation to Article 14(1)(a) to be prescribed by law in the interest of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence, only.

At this juncture it is also necessary to examine the aforementioned P6 in SC FR 139/2023 which is the Cabinet Memorandum signed and tendered by the Minister of Finance to the Cabinet of Ministers setting out the priorities of expenditure for their approval. As the Minister of Finance, he should have by then been aware of the requests for funds for the ongoing Local Government Elections. Thus, he should have been conscious of the effect of the restrictions he suggested for approval of the Cabinet but there is nothing in the said Memorandum that the Minister of Finance appraised the Cabinet of Ministers of the effect that these restrictions would cause on the ongoing Local Government Election. Thus, it speaks of an arbitrary attitude which appears to have circumvented the Cabinet of Ministers to take an informed decision but resulting in approving the selection of priorities according to the will of the Minister of Finance. Even the Cabinet Decision reflected in the aforesaid letter marked P8 in SC FR 139/2023 is made owing to certain matters stated to the Cabinet by H.E. the President who is also the Minister of Finance. There is no material to indicate that the Cabinet of Ministers were appraised with regard to the effect of the clause that Minister of Finance approval is necessary for any other essential expenditure would cause on the ongoing election process and that the holding of the said election would fall within his total control as he has to approve funds. The above situation along with the avoidance of any response to the request for funds after the

Secretary of the Ministry referred to it to the Minister as reflected in P14, shows a conduct of arbitrary nature as at least there was no indication as to when the request can be considered.

It appears that the Respondents represented by learned ASG endeavors to show that the said decisions of the Cabinet and circulars based on that especially the decisions and circulars made in terms of Section 7 of the Appropriation Act are restrictions prescribed by law. It appears this is an attempt to face the argument raised by the Petitioners in SC FR 90/2023 that the rights guaranteed under Article 14(1)(a) are only subject to such restrictions prescribed by law. In this regard the Respondents represented by the learned ASG has cited the following passage from the **Thavaneethan** case (Supra)

“The PTA, as its preamble shows, was enacted for the purpose, inter alia, of maintaining national security and public order; the regulations and order made under the PTA constitute Law, and the restrictions contained therein constitute ‘restrictions prescribed by law’ for the purpose of Article 15(7).”

In my view, the impugned decisions in the matter at hand are executive decisions in relation to the powers given to the Minister in terms of executing the Appropriation Act. Any circular issued in relation to that relates to the execution of such executive decisions. If the law itself says that right to vote or freedom of expression can be restricted through such decisions and circulars then it may become a restriction prescribed by law. No such provision has been cited. In the aforesaid Thavaneethan’s case it was further stated “*that the term ‘law’ in the given context should essentially constitute an Act of parliament or its recognized equivalent promulgated in the interest of national security.....*” indicating that it has to be an Act of Parliament or a recognized equivalent. In terms of Articles 75 and 76, the law has to be an Act of Parliament, or Emergency Regulations made by H.E. the President or subordinate legislation made by a person or body empowered by a law made by the Parliament. No such law that empowers the Cabinet to restrict freedom of expression through its decisions or circulars relating to such decision has been brought to the attention of this Court. Thus, the freedom of expression can be restricted only in the manner prescribed in Article 15(7).

It is also argued that the maxim ‘*Lex non ad cogit impossiblia*’ applies due to the non-availability of resources as it created a situation that made the Respondents incapable of providing funds for holding elections. As explained if the funds that was in the Government was depleted it was not the fault of the Petitioners, but of the authorities of the State who were responsible for the management of the Economy of the Country whether present or past. Thus,

the State is liable for any infringement caused by the denial of voting during the time it should have been made available. On the other hand, other than referring to the economic crisis and difficulties faced, affidavit of the Secretary to the Treasury and Ministry of Finance has not averred sufficient material to indicate a total inability hold the elections. While arguing that matters should be decided as at the date of *litis contestatio* was reached, the learned ASG on the other hand, as shown above, wants this court to take into consideration new objections and also wants to consider two documents, namely Midyear Fiscal Report and Budget Economic and Fiscal Position Report, which were not tendered along with the objection or with an additional affidavit to be considered in deciding this inability, for which some Petitioners have objected. It is true that they are statutory reports made in terms of Fiscal Management (Responsibility) Act and reports that were placed before the Parliament. It is also true that this Court can take judicial notice of the course of proceedings before the Legislature, but these reports contain facts for which the Petitioners could not respond through counter objections. Even if there was a difficulty in submitting these reports with the objections due to non-availability or for some other reason the relevant facts as applicable at the time of filing of objections could have shown and pleaded in the objections. If they were so pleaded the opposite parties could have analyzed the facts and placed a different expert opinion through counter objections for the consideration of this Court, if they want to challenge such facts. In that back drop, it is not proper to consider the facts contained in those reports in adjudicating the issues involved in this matter. However, as per the reports filed with the Objections marked 1R1 and 1R3 indicates that there was a budget deficit and cash flow issues, even if there was a difficulty in raising funds through foreign loans due to the crisis it is not still clear why the money could not have been raised through local resources such as treasury bonds. Nothing in the objections, to my understanding indicate that if the money necessary for the election was raised, it would exceed any limit approved by the Parliament. Mere words that inflation might have increased is not sufficient to decide the reasonableness of such decisions unless it is shown how it could have resulted in an irrecoverable collapse of the economy causing hardships to the masses. Operating the economy at a Budget deficit may not be a new thing to our country. The Respondents failed to place any material before this Court through their objections, that either there was no way to raise money even locally to hold elections or even if funds were raised, the adverse nature of its effect empirically on the inflation and cost of living etc. Mere statements that it would increase the inflation and the country would have to experience the difficulties that it faced without fuel, power, medications and other essentials as experienced sometimes ago may not suffice to show such decisions were essential and not capricious. On

the other hand, the restrictions proposed to the Cabinet were by the Minister of Finance and H.E the President, but no affidavit is tendered by the Minister of Finance to justify the selection of such restrictions. Perhaps these restrictions are proposed by various officials in the Finance Ministry but when it is tendered to the Cabinet under the signature of the Minister of Finance, he has to take the responsibility of what is so tendered. In that back drop, this Court cannot be satisfied that there was sufficient material placed before this Court to show that there was a total impossibility to hold the Local Government Polls and that the decision-making process was not tainted with arbitrariness.

It is also contended by some of the Respondents that there are certain limitations placed upon the jurisdiction of this Court as this matter relates to public finance. In this regard, the attention of this Court has been brought to Articles 4(c), 118 and 148 of the Constitution. Article 148 provide that '*Parliament shall have the full control over the public finance*'. As per Article 4(c) the judicial power of the people may be directly exercised by the Parliament with regard to matters relating to the privileges, immunities and powers of the Parliament and of its Members and the jurisdiction of courts is excluded with regard to them. The learned ASG contended that the fundamental rights jurisdiction of this Court exercised in terms of Article 126 read with Article 118 of the Constitution is subject to the provisions of the Constitution and as such is subject to the provisions in Article 4(c) and 148. Referring to **Attorney General v Dr. U.A.B.W.M.R.S.A. Bandaranayake S C Appeal/67/2013**, SC minutes of 21.02.2014 which identified the existence of *sui generis* powers other than legislative powers, it is contended that the power conferred upon the Parliament by Article 148 is a *sui generis* power.

It is also brought to the notice of this court that in the **Special Determination on the Appropriation Bill (2008)** [Decisions of the Supreme Court on Parliamentary Bills (2007-2009) Vol IX 44 at 45] it is stated as follows:

"In the Determination made by a Bench of Seven Judges in regard to the Bill titled the 19th Amendment to the Constitution (S.D. No. 11-40/2002) this Court laid down the manner in which the provisions of Articles 3 and 4 of the Constitution as to sovereignty of the People and its exercise have to be interpreted. According to that Determination in terms of Article 4(a) of the Constitution, Parliament is the custodian of legislative power of the People and will exercise that power in trust for the People in whom sovereignty is reposed. Legislative power includes the "full control over public finance" as stated in Article 148 cited above, which in

our opinion is also a vital component of the balance of power firmly established by the Constitution in relation to the respective organs of government.

Article 30(1) of the Constitution states that the President is the "Head of the Executive and of the Government". In terms of Article 43(1), the Cabinet of Ministers is charged with the direction and control of the Government and is collectively responsible and answerable to Parliament. One important check on the exercise of executive power is that finance required for such exercise remains within the full control of Parliament - the legislature. There are three vital components of such control in terms of the Constitution viz:

- (1) *control of the sources of finance i.e. imposition of taxes, levies, rates and the like and the creation of any debt of the Republic;*
- (2) *control by way of allocation of public finance to the respective departments and agencies of Government and setting limits of such expenditure;*
- (3) *control by way of continuous audit and check as to due diligence in performance in relation to (1) and (2).*

Since such control is exercised by Parliament in trust for the People, we are of the opinion that the process should be transparent and in the public domain, so that People who remain Sovereign are informed as to the manner of control is exercised."

The case of **Appropriation Bill (2012)** [Decision of the Supreme Court on Parliamentary Bills (2010-2012) Vol.X 109 has been cited to indicate that the Parliament must exercise such control in a manner transparent and the Parliament's control is at a macro-level and the Parliament is not expected to micro manage the finances of the Government. Our attention was also brought to the provisions of Fiscal Management (Responsibility) Act to show how this control takes place through placing certain reports before the Parliament for the scrutiny by the Parliament or by a relevant Parliamentary Committee.

The 12th Respondent in SC FR 90/2023, the Director General of Government Information also has expressed similar views in his written submissions and he associates with the submissions made by the learned ASG. In those written submissions he has quoted the following passages from the decision in the old case (19th Century) of **The Queen v Lord Commissioners of the Treasury L.R. 7 Q.B. 387**

"The effect of the annual Appropriation Act is not to give any third person a right to the money; but it is to prevent the Crown from appropriating money given for one purpose to another. The

money is not a charge on the Consolidated Fund, although it comes out of that fund; it is voted annually. The effect of the schedule to the Act is not that the sum named shall be appropriated to the purposes mentioned, but that the Treasury shall not apply a sum beyond that which is mentioned to those purposes; it is not an enabling but a restrictive Act; and the meaning of the word "appropriated" is appropriated as between the Crown and the House of Commons; there is no obligation on the Treasury to pay any sums; but they may pay them. These sums are given to the Crown, and there is no legal obligation on the Crown which this Court can enforce. Further, it is discretionary with the Treasury what amount shall be expended. ..." (page 390).

"I cannot see anything in that statute which imposes a duty at Law upon the Lords Commissioners of the Treasury. It may be a duty that they owe to the Crown, or it may be a duty that they owe to parliament to apply this money in discharge of the amounts which the counties are compelled without any choice on their part to pay; but it is a duty to the Queen or a duty to parliament, and it is not a duty at law which by any legal proceeding or by the exercise of the prerogative jurisdiction of this Court we can enforce." (page 395).

However, this Court also observes that as per the Appropriation Act No.23 of 2022, the Minister among other powers has power on certain occasions to transfer money from one allocation to another – vide Section 5 and 6. The Minister also has the power to limit expenditure previously authorized and to withdraw money already released under the authority of a warrant issued by him but with the approval of the government- vide section 7.

Referring to the same case quoted above **H.W.R Wade and C F Forsyth in their 11th Edition of Administrative Law by Oxford University Press** at page 530 states as follows;

"Similarly, no mandatory order will issue to the Treasury to pay monies appropriated by Parliament for a given purpose, since the money is granted to the crown, and even though it is in the hands of the Treasury, they are merely the instrument of the Crown for handling the Money."

The Director General of Government Information Department in his written submissions has referred to the following decisions of this Court which have held that decisions based on economic considerations must largely be left to the Legislature in view of the inherent complexity of fiscal adjustment of diverse elements that requires to be made.

Inland Revenue (Amendment) Bill (Decisions of the Supreme Court on Parliamentary Bills (1978-1983), Vol. L, 99 at 100), **Default Taxes (Special Provisions) Bill** (Decisions of the

Supreme Court on Parliamentary Bills (2007-2009), Vol. IX, 63 at 64), **Inland Revenue Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105 at 107, Inland Revenue Bill (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105 at 107), **Inland Revenue Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105 at 107) and **Inland Revenue Amendment Bill** (SC.S.D No.3/1980) (Decisions of the Supreme Court on Parliamentary Bills (1978-1989), Vol. 1 99 at 100.

Anyhow, the arguments, that take up the position that the full control of public finance is a prerogative of the Parliament, is to indicate that this Court should not interfere with that function. This Court interferes with the control of public finance only if this Court decides and directs as to the manner the public finance should be utilized and / or if this Court engages in a decision making which evaluated the good and bad or appropriateness of the said decisions. However, said provisions, in my view does not create any obstacle to see whether the executive was arbitrary or capricious in its decision making. Such a decision will not overlap with the powers of Parliament to control public finance.

It appears that the Director General of Government Information in his written submission takes up the position that the process of selecting priorities and placing it for Cabinet approval cannot be challenged as it relates to public finance and it is subject to the control by Parliament which is a legislative process. He quotes the following statement made in **Mathiaparanam Abraham Sumanthiran v Hon. Mahinda Yapa Abeywardana** SC FR 37/2024, SC Minutes 29.02.2024,

“..legislative process commences with the line ministry forwarding a memorandum to the Cabinet seeking approval from the Cabinet to enact legislation on the matter referred to in the memorandum....”

However, the Cabinet Memorandum for the approval of priorities for certain expenditure was not to pass a law. Even it is considered as one relates to public finance as explained above this Court's power to see whether the executive decisions that relates to the said memorandum are arbitrary or not, does not overlap with the powers of Parliament to control the public finance.

The learned ASG has submitted that the Contingency Fund referred to in Article 151 is not a viable alternative to finance the Local Government Election 2023 and it is for the purposes of unforeseen urgent expenditure but not for the foreseen expenditure such as elections. He also submits facts to indicate that such fund has not been maintained. If such fund was there, it could

have relieved the burden created by economic crisis to some extent and making it possible for the money allocated for elections retain for the allocated purpose.

Even though the learned ASG has made submissions that the actions brought by the Petitioners are not in the public interest as pleaded by them, this issue need not be further discussed as all the applications have been filed in their own right as Petitioners along with a plea to consider the application as an application filed on behalf the public. Thus, the Petitioners have right to proceed with as an application filed on their own rights.

In their written submissions Petitioners in SC FR 139/2023 have taken up the position that, in view of the decision of this Court in SC Contempt 02/2023 and 03 /2023, where it was decided that the Secretary to the Treasury was not in a position to accept the responsibility of withholding or issuing the funds for the Local Government Election 2023, he does not have any standing to object or respond to the instant fundamental right application. That decision was with regard to the penal consequences as he was charged for contempt. As he has been made a respondent and was the one with whom the Election Commission communicated with for funding and also being the Secretary to the Ministry of Finance and the Treasury who is in charge of the administration of those institution, he has a right to respond to the allegation. Thus, the submissions made by the learned ASG which are based on the objections of the Secretary to the Treasury cannot be totally rejected and thus considered above in making this decision.

As per the analysis made above this Court arrives at the following findings:

1. Executive Branch of the State represented by Honourable Attorney General is liable for infringement of the fundamental right guaranteed under Articles 12(1) and 14(1)(a) of the Constitution for not holding Local Government Election 2023.
2. The impugned acts and omissions of the Chairman and the members of the Election Commission who held office during the period of time relevant to these applications (for ease of convenience, Nimal Punchihewa, S.B.Divaratne, M.M.Mohamed, K.P.P.Pathirana and P.S.M. Charles) had resulted in the infringement of the fundamental right guaranteed under Article 14(1)(a) of the Constitution for lack of

proper planning and managing the process and for not using its powers to issue appropriate directions.

3. The impugned acts and omissions of H.E. the President who is also the Minister of Finance that were impugned by making these applications against the Honourable Attorney General had resulted in the infringement of fundamental rights guaranteed under Articles 12(1) and 14(1)(a) of the Constitution due to arbitrary and unlawful conduct explained in this judgment which resulted in the non-holding of the Local Government Elections 2023.
4. The Secretary to the Treasury and the Ministry of Finance is not made liable as there is no material that he failed to cooperate with the functions of the Election Commission. He had acted in accordance with the directions of the Cabinet of Ministers and the Minister of Finance.
5. The Cabinet of Ministers are not made liable as they have not been properly apprised of the effect of restrictions imposed on expenditure, on the holding of Elections when their approval for such restrictions was sought.
6. The Government Printer and the IGP are not made liable as there is no sufficient material to show collusive action. The Election Commission should have exercised their powers and authority vested on them by the Constitution to obtain their services.
7. The Director General of Government Information is not made liable as there is no sufficient material to show any collusive action.
8. Other Respondents who are not referred to above are not made liable as there is no material to show that they did not want to cooperate with the functions of the Election Commission.

As remedial measures this Court makes the following directions;

1. The Election Commission is directed to schedule the Local Government Elections 2023 at the earliest possible with due regard to their duty to hold other elections as required by law.
2. The Election Commission is further directed to exercise their powers and authority vested by law and obtain assistance from the relevant State agencies, in holding the said election,
3. State is directed to pay Rupees One Hundred and Fifty Thousand as costs in each case.

Judge of the Supreme Court

Hon. Jayantha Jayasuriya P.C., CJ.

I agree

Chief Justice

Hon. Vijith K Malalgoda P.C., J.

I agree.

Judge of the Supreme Court

Hon. Murdu Fernando P.C., J.

I agree

Judge of the Supreme Court

Hon. Yasantha Kodagoda P.C., J.

I agree.

Judge of the Supreme Court