

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

In the matter of an Application for mandates
in the nature of Writs of *Certiorari*, Prohibition
and *Mandamus* under and in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0237/2020

Sunny Rohana Kodithuwakku

No. 03, Tapal Niwasa Road
New Town
Embilipitiya.

Petitioner

Vs

1. **Mahinda Deshapriya,**
Chairman, Election Commission.
Election Secretariat
Saran Mawatha
Rajagiriya.
2. **N. J Abeysekere,**
Member, Election Commission
Election Secretariat
Saran Mawatha
Rajagiriya.
3. **S. Rajnajeevan H. Hoole,**
Member,
Election Secretariat
Saran Mawatha
Rajagiriya.
4. **Ms. Malini Lokupothagama,**
Returning Officer and District
Secretary (Government Agent) of

Ratnapura,
District Secretariat,
Ratnapura.

5. **Suranga Ambagastanne,**
Assistant Commissioner of
Elections,
Office of the Assistant
Commissioner of Elections,
District Secretariat,
Ratnapura.
6. **P.M Anura Samaratunga,**
Counting Officer,
C/o 4. Ms. Malini Lokupothgama
Returning Officer and District
Secretary (Government Agent)
Of Ratnapura,
District Secretariat,
Ratnapura.
7. **Ranjith Bandara**
Mudduwa,
Ratnapura.
8. **Dhammika Dassanayake**
Secretary General of Parliament,
Parliamentary Complex,
Sri Jayawardenepura, Kotte.
9. **Vasudava Nanayakara,**
1316, Nelum Mawatha
Jayanthipura,
Battaramulla
10. **Sagara Kariyawasam,**
Secretary of the Sri Lanka
Podujana Peramuna
1316, Nelum Mawatha

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
S. U. B. KARALLIYADDE, J.

Counsel: Dulindra Weerasooriya, PC with Pasan Malindu for the
Petitioner.

V. Siriwardena, ASG, PC with N, Kahawita, SC for the 1st, 6th
and 8th Respondents.

Supported on: 18.07.2023
Decided on: 19.10.2023

MOHAMMED LAFFAR, J.

The Petitioner was a contestant at the General Election held on 05-08-2020 representing the Sri Lanka Podujana Peramuna (SLPP) from the Electoral District of Ratnapura. The SLPP secured 08 seats from the Ratnapura District. The names of candidates who were elected to Parliament were published in the Gazette Extraordinary No. 2187/26 dated 08-08-2020 **(P10)** by the Election Commission under Section 62 of the Parliamentary Elections Act, No. 01 of 1981. The Petitioner failed to secure sufficient votes to be elected to Parliament. The Petitioner states that the preferential votes received by the Petitioner should be 53954 whereas it was erroneously declared that the Petitioner received only 53261 preferential votes. In those circumstances, the Petitioner is seeking, *inter-alia*, Writs of Certiorari, quashing the decision of the Election Commission that the Petitioner has received only 2397 preferential votes from the polling division of Kolonne in the electoral division of Ratnapura and a Writ of Mandamus directing the Election Commissioner to recount the preferential votes of the counting center No. 105.

When the matter was taken up for argument on 08-07-2023, the learned Additional Solicitor General appearing for the 1st to 6th and 8th Respondents raised a preliminary legal objection as to the

maintainability of this Application stating that this Court has no jurisdiction to hear and determine the matter.

In terms of Article 144 of the Constitution, the Court of Appeal shall have and exercise jurisdiction to try election petitions in respect of the election to the membership of Parliament in terms of any law for the time being applicable on that behalf. However, the Petitioner failed to invoke the jurisdiction of this Court under Article 144 of the Constitution.

Instead, the Petitioner is invoking the Writ jurisdiction of this Court under Article 140 of the Constitution. It is pertinent to note that in terms of Article 104H of the Constitution, the Writ jurisdiction pertaining to elections of this nature is vested with the Supreme Court and not with the Court of Appeal. Article 104H reads as follows;

(1). The jurisdiction conferred on the Court of Appeal under Article 140 of the Constitution shall, in relation to any matter that may arise in the exercise by the Commission of the powers conferred on it by the Constitution or by any other law, be exercised by the Supreme Court.

(2). Every Application invoking the jurisdiction referred to in paragraph (1), shall be made within one month of the date of the commission of the act to which the application relates. The Supreme Court shall hear and finally dispose of the application within two months of the filing of the same.

It is to be noted that in terms of Article 104G of the Constitution, all public officers performing duties and functions at any election or referendum shall act in the performance and discharge of such duties and functions under the directions of the Commission and shall be responsible and answerable to the Commission.

The substantive reliefs sought by the Petitioner in this Application are against the Election Commission. Under Article 104H of the Constitution, the Supreme Court has Writ jurisdiction exclusively regarding matters dealing with the Election Commission. Thus, it is the considered view of this Court that the Court of Appeal has no jurisdiction to hear and determine the instant Application.

For the foregoing reasons, I uphold the preliminary legal objection raised by the learned Additional Solicitor General for the Respondents. Accordingly, the Application is dismissed. No costs.

Application is dismissed, No costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL