

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

In the matter of an application in terms of Article
140 of the Constitution for a mandate in the
nature of a Writ of Quo Warranto.

CA (Writ) Application 434/2022

Hitihamilage Don Oshala Lakmal Anil Herath
No 22, Wata Mawatha,
Piliyandala.

Petitioner

-Vs-

1. Hon. Diana Gamage
State Minister of Tourism,
No. 537/21 Country Glade Bungalow,
Amaragoda Road, Pothuwarawa,
Hokandara North.

2. Hon. Tiran Alles Minister of Public Security,
15th Floor "Suhurupaya",
Baththaramulla.

3. I. S. H. J. Ilukpitiya
Controller General of Immigration and
Emigration,
Department of Immigration and Emigration,
"Suhurupaya",
Battaramulla.

4. Ranjith Madduma Bandara
General Secretary,
Samagi Jana Balawegaya,

72, Dr. N. M. Perera Mawatha,
Colombo 8.

5. Dhammika Dassanayake
Secretary General of Parliament,
Parliament of the Democratic Socialist
Republic of Sri Lanka,
Sri Jayawardenapura Kotte.
6. N. G. Punchihewa Chairman,
Elections Commission of Sri Lanka,
Elections Secretariat, P.O. Box 02,
Sarana Mawatha, Rajagiriya.
7. S. B. Diwarathne Member, Elections
Commission of Sri Lanka,
Elections Secretariat, P.O. Box 02,
Sarana Mawatha, Rajagiriya.
8. M. M. Mohomed,
Member, Elections Commission of Sri Lanka,
Elections Secretariat,
P.O. Box 02, Sarana Mawatha,
Rajagiriya.
9. K. P. P. Pathirana.
Member, Elections Commission of Sri Lanka,
Elections Secretariat,
P.O. Box 02, Sarana Mawatha,
Rajagiriya.
10. P. S. M. Charles
Elections Commission of Sri Lanka,
Elections Secretariat, P.O. Box 02,

Sarana Mawatha,
Rajagiriya.

11. Mahinda Deshapriya Former Chairman,
Elections Commission of Sri Lanka, Elections
Secretariat, P.O. Box 02,
Sarana Mawatha,
Rajagiriya.

12. N. J Abeysekara,
President's Counsel Former Member, Elections
Commission of Sri Lanka,
Elections Secretariat, P.O. Box 02, Sarana
Mawatha,
Rajagiriya.

13. Prof. Rathnajeewan
Hoole Former Member, Elections Commission
of Sri Lanka Elections Secretariat,
P.O. Box 02, Sarana Mawatha,
Rajagiriya.

14. M. S. Karunaratne Chief Inspector of the
Human Trafficking and Smuggling Division,
Criminal Investigations Department,
Sri Lanka Police, York Street, Colombo.

15. Hon. Attorney General
Attorney General's Department,
No. 159, Hulftsdorp,
Colombo 12.

Respondents

Before: **N. Bandula Karunarathna J. (P/CA)**

K.K.A.V. Swarnadhipathi J.

M.A.R. Marikar J.

Counsel: Hafeel Fariz, AAL with Nishika Fonseka, AAL instructed by
Gayana Salwathura, AAL for the Petitioner.

Shavindra Fernando PC, with Mirthula Skandaraja, AAL for
the 1st Respondent

Forman Cassim PC, Budwin Siriwardana, AAL instructed by
Sandun Gamage for the 4th Respondent

Sudesh Madanayaka, AAL instructed by Janko, AAL for the 9th
and 10th Respondents

S. Wimalasena, DSC with R. Aluwihare, SC for the Hon.
Attorney General.

Written Submissions: By the Petitioners – 27.03.2023

By the 1st Respondent – 27.03.2023

By the 2nd, 3rd and 5th Respondent – 31.03.2023

By the 4th Respondent – 22.03.2023

Supported on : 18.05.2023

Decided on : 31.10.2023

N. Bandula Karunarathna J. P/CA

This is an application for grant and issue a mandate in the nature of a Writ of Quo Warranto requiring the 1st Respondent to show by what authority she claims to hold office and continues to function as a Member of Parliament of the Democratic Socialist Republic of Sri Lanka. Further the petitioner request to grant and issue a mandate in the nature of a Writ of Quo Warranto declaring that the 1st Respondent is disqualified to be a Member of Parliament and is thus not entitled to hold office as a Member of Parliament of the Democratic Socialist Republic of Sri Lanka.

When this matter was taken up before this court on 02.03.2023, the learned President Counsel appearing on behalf of the 1st Respondent indicated to Court that he wishes to raise few preliminary objections.

The preliminary objections are as follows;

- i. The Petition of the Petitioner has not been filed in compliance with Rule 3 (1) (a) of the Supreme Court Rules and should be dismissed in *limine*.
- ii. The facts are in dispute between the parties. That is the Petitioner, the 1st Respondent, and the 3rd Respondent as evident from the pleadings and as such writ will not lie and the Petition of the Petitioner should be dismissed in *limine*.
- iii. The relief sought in the Petition of the Petitioner is not conclusive, as such, granting such relief by this Court will be futile. Therefore, the Petition of the Petitioner should be dismissed in *limine*.

Both parties were allowed to make their submissions. Now this matter is coming up for Order regarding the preliminary objection.

The Petitioner states that the 2nd to 15th Respondents have only been named as parties for the purpose of notice and in order for the said Respondents to produce any documents pertaining to the subject matter of this Application, if directed to do so by this Court.

The Petitioner states in his petition as follows;

- i. the 1st Respondent is a British citizen and holder of British Passports bearing Nos. 094425352 and 521398876;
- ii. only a British citizen can hold a British Passport;

- iii. by virtue of becoming a citizen of another country, the 1st Respondent ceased to be a Sri Lankan citizen;
- iv. the 1st Respondent has not obtained dual citizenship and any other form of citizenship in Sri Lanka;
- v. *ex facie* the 1st Respondent has also submitted forged documents to the authorities;
- vi. the 1st Respondent is not entitled to be an elector and was not qualified to be elected as a Member of Parliament;
- vii. the 1st Respondent is disqualified from holding office as a Member of Parliament.

The Petitioner further states that;

- i. by Proclamation published in the Gazette notification bearing No. 2165/8 dated 02.03.2020, His Excellency the President of Sri Lanka *inter alia* dissolved the Parliament with effect from midnight, summoned the new Parliament to meet on 14.05.2020, and fixed 25.04.2020 as the date for the 2020 General Election;
- ii. Thereafter, the 11th to 13th Respondents issued the Gazette notification bearing No. 2167/13 dated 20.03.2020 giving notice of the list of persons qualified to be elected as Members of Parliament at the upcoming 2020 General Election, as submitted to the said Respondents under Article 99A of the Constitution by the respective political parties contesting the election;
- iii. *ex facie* P 3 (b), the name of the 1st Respondent is included in the list submitted by the Samagi Jana Balawegaya;
- iv. Following postponements due to the COVID-19 pandemic and related restrictions, the 2020 General Election was held on 05.08.2020 by notice given by the 11th to 13th Respondents acting in terms of section 24(3) of the Parliamentary Elections Act, No. 1 of 1981.

The Petitioner states that the Petitioner exercised his lawful franchise at the 2020 General Election held on 05.08.2020 as an elector of the Colombo Electoral District, verily of the belief that all the candidates listed in P3(b) were duly qualified to be elected as Members of Parliament. The Samagi Jana Balawegaya secured 2,771,980 votes at the 2020 General Election, winning 54 Parliamentary seats, inclusive of seven seats via the National List. The Petitioner states that by Gazette notification bearing No. 2188/46 dated 14.08.2020, the 1st Respondent was deemed to have been elected as a Member of Parliament under Article 99A of the Constitution.

The Petitioner states that by Proclamation dated 03.08.2020, His Excellency the President of Sri Lanka summoned the Parliament of Sri Lanka to meet on 20.08.2020, and the 1st Respondent took oaths as a Member of Parliament on such occasion. Thereafter, despite the 1st Respondent having been appointed as a Member of Parliament on the National List of the Samagi Jana Balawegaya, the 1st Respondent voted for the 20th Amendment to the Constitution, contrary to the stance of the Party. To the best of the Petitioner's knowledge, the 1st Respondent was expelled from the Samagi Jana Balawegaya as a result of the aforesaid, which decision the 1st Respondent has challenged.

The 1st Respondent was appointed as the State Minister of Transport on 18.04.2022 and her portfolio was later changed to State Minister of Tourism on 08.09.2022, which position she holds to-date. On 11.11.2022, the Colombo Chief Magistrate's Court also imposed an overseas travel ban on the 1st Respondent until 17.11.2022, in which court the criminal investigation is pending.

The Petitioner submits that the 1st Respondent at the time of signing her nomination papers and the holding of the 2020 General Election and taking oaths as a Member of Parliament and at all times material to the instant Application was not a citizen of Sri Lanka. The 1st Respondent continues to hold office as a Member of Parliament without being a citizen of Sri Lanka. The 1st Respondent had been nominated as a Member of Parliament sans any vires. The said nomination and appointment are a nullity. The 1st Respondent is disqualified from election as a Member of Parliament or to sit and vote in Parliament under and in terms of Article 91 read with Article 89 and Article 90 of the Constitution of Sri Lanka.

The Petitioner accordingly states that;

- i. the 1st Respondent being elected and continuing to hold office as a Member of Parliament is *ultra vires* the Constitution and the Parliamentary Elections Act.
- ii. the taking of oaths by the 1st Respondent as a Member of Parliament and the functioning of the 1st Respondent as a Member of Parliament is a nullity.
- iii. the actions and omissions of the 1st Respondent are tantamount to a subversion of the franchise and a misleading of the members of the general public.
- iv. the actions and omissions of the 1st Respondent are motivated by improper objectives.

The Petitioner further states that in the totality of the aforesaid circumstances the Petitioner is entitled to in law to invoke the jurisdiction of this Court to seek *inter alia* the following;

- i. A mandate in the nature of a Writ of Quo Warranto requiring the 1st Respondent to show by what authority she claims to hold office and continues to function as a Member of Parliament of Sri Lanka,
- ii. A mandate in the nature of a Writ of Quo Warranto declaring that the 1st Respondent is disqualified to be a Member of Parliament and is thus not entitled to hold office as a Member of Parliament of Sri Lanka,
- iii. A direction on the 3rd Respondent to submit before this Court all documentation relating to the 1st Respondent's residence and citizenship status.

The Petitioner argues that the instant application before this Court has a direct bearing on the franchise of the people of the Republic, which the Petitioner believes has been abused and continues to be abused by the 1st Respondent and as such grave and extreme urgency exists.

The Petitioner filed this application by the Petition dated 14.11.2022 seeking a Writ of Quo Warranto requiring the 1st Respondent to show by what authority she claims to hold office and continues to function as a Member of Parliament.

The Petitioner submits that having failed to make appearance when the matter was supported with notice on 28.11.2022, the 1st Respondent was represented in court on the notice returnable date 12.12.2022, whereupon the matter was fixed for argument on top of the list on 26.01.2023. This Court, with the concurrence of the parties, fixed dates for the filing of the Statements of Objection and Counter Affidavit. Statements of Objections were filed on behalf of the 2nd, 3rd and 15th Respondents jointly dated 10.01.2023 and by the 4th Respondent dated 09.01.2023, to which the Petitioner filed a Counter Affidavit dated 20.01.2023.

However, the learned counsel for the Petitioner submits that thereafter, the 1st Respondent on several occasions unconscionably sought to delay these proceedings, variously claiming that;

- a. she required a period of two months to file her objections due to an official trip overseas.
- b. she was awaiting certain documents from the 3rd Respondent.
- c. she wished to lodge an appeal in terms of the Right to Information ("RTI") Act on the 3rd Respondent's response to her RTI request, that the Department of Immigration and Emigration did not have or maintain a file pertaining to her.

Having finally filed her objections dated 24.02.2023 to which the Petitioner immediately filed a Counter Affidavit dated 28.02.2023, when the matter came up for argument for the third time

on 02.03.2023, the 1st Respondent, for the first time, took up a preliminary objection in open court. On the next date fixed for argument, 09.03.2023, it was agreed that Parties would file written submissions on the preliminary objection raised by the 1st Respondent.

It was the contention of the learned Counsel for the Petitioner that by Gazette Notification bearing No. 2188/46 dated 14th August 2020 ("P 6"), the 1st Respondent was deemed to have been elected as a Member of Parliament under Article 99A of the Constitution. Thereafter, the 1st Respondent was appointed State Minister of Transport ("P9(a)") and her portfolio was later changed to State Minister of Tourism ("P9(b)"), which position she holds to-date. Shortly after the 1st Respondent took oaths as a Member of Parliament on 20.08.2020, the Petitioner lodged a complaint ("P10(a)") with the Criminal Investigations Department of the Sri Lanka Police on 01.11.2020 alleging, with supporting documentation, that the 1st Respondent is a British citizen and is unlawfully residing in Sri Lanka without a valid visa.

Pursuant to the said complaint and an investigation thereon, the then holder of the office of the 14th Respondent reported facts before the Colombo Magistrate's Court in case bearing No. B 48037/01/2021, inclusive of a summary of statements from witnesses ("P12"). However, thereafter, no steps were taken in the said case for more than 18 months until 27.10.2022 when the investigation was reopened pursuant to a motion filed in the said Magistrate's Court case. The Deputy Controller of Immigration and Emigration and the Deputy Commissioner, Department of Registration of Persons, state *inter alia* that the 1st Respondent had applied for a visa to visit Sri Lanka using the British passport bearing no. 521398876.

This is corroborated by the document marked "R 4" tendered with the Statement of Objections of the 2nd, 3rd and 15th Respondents. According to paragraph 19(ix)(d) of the corresponding Affidavit of the 3rd Respondent, the said document "R 4" bears out "the entry and exit details which appear in the Border Control System for the Passport Number 521398876": the name of the passport holder and the photograph depicted unambiguously correspond to the 1st Respondent, whose nationality is stated to be "BRITISH CITIZEN".

It was further substantiated by the document marked "R 1" tendered with the Statement of Objections of the 4th Respondent. This document is a letter dated 15.12.2021 issued by the predecessor of the present holder of the office of the 3rd Respondent, which has been tabled in Parliament and is recorded in the Hansard and states that;

- (a) per the digital records maintained by the Department of Immigration and Emigration, the 1st Respondent has been a British citizen since 2004, using the British passport bearing no. 521398876;
- (b) thus, her Sri Lankan citizenship has ceased according to law;
- (c) having suppressed her British citizenship; the 1st Respondent obtained a Sri Lankan passport bearing no. N5091386 on 24.01.2014;
- (d) having again suppressed her British citizenship, the 1st Respondent obtained an official passport bearing no. OL5654794 on 05.11.2018.

Learned Counsel for the Petitioner argued that most recently, as borne of the aforesaid Magistrate's Court Case No. B 48037/01/2021", the 1st Respondent in her statement to the Criminal Investigations Department of the Sri Lanka Police confirms that she was a British citizen until 2014. "R4" tendered by the 2nd, 3rd and 15th Respondents, demonstrates that the 1st Respondent was still using her British passport in October of 2014 and she was deemed a British citizen. The learned Counsel for the Petitioner further submits that the 1st Respondent is a British citizen is confirmed by her own statements, by the records maintained by the 3rd Respondent and by the proof tendered by the Petitioner. No facts are in dispute as the 1st Respondent herself admits that she was in fact a British citizen.

However, on behalf of the Petitioner it was further argued that the purpose of clarity, the Petitioner is before this Court seeking a Writ of Quo Warranto. A Writ of Quo Warranto requires the 1st Respondent to show by what authority she claims to hold office and continues to function as a Member of Parliament.

It is the contention of the learned Counsel for the Petitioner that when a Writ of Quo Warranto is filed and upon notice being issued, having considered the existence of a *prima facie* case, the law is that the burden shifts on the Respondent. The 1st Respondent has to come before this Court and in fact state by what authority she claims to hold office. The Petitioner seeks this remedy on the basis that, as set out above, the 1st Respondent was a British citizen at the time of her appointment as a Member of Parliament and remains as a British citizen to date, and is thus disqualified from holding office as a Member of Parliament in terms of Article 91 read with Article 89 of the Constitution:

Article 91 of the constitution is as follows;

(1) No person shall be qualified to be elected as a Member of Parliament or to sit and vote in Parliament- (a) if he is or becomes subject to any of the disqualifications specified in Article 89; ...

Article 89 of the constitution is as follows;

No person shall be qualified to be an elector at an election of the President, or of the Members of Parliament or to vote at any referendum, if he is subject to any of the following disqualifications, namely- (a) if he is not a citizen of Sri Lanka; ...

The 1st Respondent's preliminary objection is that the facts in respect of the 1st Respondent's citizenship are in dispute and hence this Court cannot exercise Writ jurisdiction.

In the first place, the Petitioner draws attention to the fact that it is only the 1st Respondent who can conclusively resolve the said purported dispute by tendering to this Court proof of her Sri Lankan citizenship in terms of the Citizenship Act No. 18 of 1948 as amended ("Citizenship Act"), or proof of renunciation of her British citizenship. However, the 1st Respondent has submitted no such proof or indeed any supporting documentation to this effect and she has not even expressly averred to this Court that she is a citizen of Sri Lanka or that she has renounced her British citizenship.

Secondly, the learned Counsel for the Petitioner argues that the 1st Respondent relies on four cases in raising this preliminary objection. However, the Court will observe that in all four of those cases, the reliefs sought are Writs of Certiorari and Mandamus. Even if it is accepted that Writs of Certiorari and Mandamus do not lie when facts are in dispute, the position of the law in Writs of Quo Warranto is entirely different: the remedies are incomparable and the said principle does not indiscriminately apply. The Writ of Quo Warranto requires the person on whom it is issued to show by what warrant or authority such person holds or exercises public office or franchise.

Justice P. B. Banerjee of the Calcutta High Court in his treatise Writ Remedies: Remediable Rights under Public Law (8th Edition), offers the following explanation at page 281;

“Quo warranto means in short "by what authority." Quo warranto is the name of the writ by which an action is commenced for recovering an office of the franchise from the person or authority possessing the same without valid title to the office and usurping the same. It is the remedy of proceeding whereby the Court enquires into the legality of the claim which a party asserts to an office or franchise and to oust him from its

enjoyments if the claim is not well-founded or to have been declared forfeited and to recover it.”

Hence, unlike the other prerogative writs, the Writ of Quo Warranto gives the Court the power to oust an illegal holder of public office, and, prior to a determination on the same, the Court enquires into the legality of the authority by which such person holds such office; this would necessarily involve consideration of the disputed facts and positions taken by the competing parties.

As held by the Supreme Court of India in ***The University of Mysore and another vs. C.D. Govinda Rao and another 1965 AIR 491***:

“Broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of *quo warranto* gives the judiciary a weapon to control the Executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public, who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a Writ of Quo Warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.”

It is important to note that in such an inquiry by the court, it is in fact the person against whom the Writ is sought who is required to show by what authority such person holds or is entitled to hold office.

As held by Justice Brijesh Kumar of the Supreme Court of India in ***B.R. Kapoor vs. State of Tamil Nadu and another (Writ Petition (civil) 242 of 2001***, judgement delivered on 21.09.2001.

“A writ of Quo Warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only a usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is

required to show, by what authority that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfil the required qualifications or suffers from any disqualification, which debars the person to hold such office.”

Moreover, and most importantly, it is worth bearing in mind that quo warranto is an essential remedy for safeguarding the public interest. As stated in V.G. Ramachandran's Law of Writs (7th Edition), Volume 2 at page 357.

“Since quo warranto is invoked against abuse, misuse or non-use of public office, the State is the real party plaintiff and the usurper of such office is the defendant asserting and justifying his claim. It, thus, safeguards public interest by determining the right to hold public office and also protects a person from being deprived of his right to public office without due process of law.”

In Sri Lanka, though jurisprudence on quo warranto is limited, the consistent position of the Court has been that *inter alia* a Writ of Quo Warranto lies in appropriate circumstances to disqualify a Member of Parliament from sitting and voting in parliament. This was the opinion of this Court in **Dilan Perera vs. Rajitha Senaratne 2000 (2) SLR 80**, where the court held that;

“It is to be observed that quo warranto is a remedy available to call upon a person to show by what authority he claims to hold such office. Therefore, the basic purpose of the writ is to determine whether the holder of a public office is legally entitled to that office. If a person is disqualified by law to hold statutory office the writ is available to oust him.”

In the said case, this Court also stated that there is no question of delay in an application for quo warranto:

In respect of the question of delay, the learned counsel for the petitioner argued that there can be no delay in this case for the reason that the mischief complained of is a continuing one. In other words, the 1st respondent's continuance in office affords fresh cause of action each day till he is removed. Therefore, it would appear that there is no question of delay as far as this Writ is concerned.

Similarly, in **Geetha Samanmali Kumarasinghe and others vs. N.W.E. Buwaneka Lalitha and others (SC/APPEAL/99/2017, SC Minutes of 02.11.2017)**, the Supreme Court held;

“writ of quo warranto is a remedy available to call upon a person to show the authority under which he holds the public office and that if the holder of the public office is not legally entitled to hold the public office, court has the power to grant a writ of quo warranto to oust him.”

In the said case, the Supreme Court, sitting in appeal from a judgement of the Court of Appeal, was presented with competing versions of the citizenship status of the Appellant Member of Parliament, and, having enquired into the matter and considered the disputed facts, concluded that the Appellant had been a dual citizen at the time of her election as a Member of Parliament, which, being against the prevailing law at the time, meant she was not qualified to be elected as a Member of Parliament and thus not qualified to hold such office; accordingly, the Writ of Quo Warranto issued by the Court of Appeal was upheld by the Supreme Court.

The Supreme Court also observed in the said case that since the Appellant had admitted that she was a citizen of Switzerland and was now contending that she had given up such citizenship, "the burden shifts to the 1st Respondent to prove the date on which she gave up citizenship of Switzerland", going on to cite sections 101, 103 and 106 of the Evidence Ordinance. The Supreme Court went on to state. The learned Counsel for the Respondent says that the 1st Respondent-Appellant is the best person to speak about the date on which she gave up the citizenship of Switzerland more than anybody. She even in her Statement of Objection and her Affidavit filed in the Court of Appeal, does not state the date on which she gave up the citizenship of Switzerland.

Hence, the settled position of the law is clearly that in the issuance of a Writ of Quo Warranto where the party against whom it is sought mounts a challenge resulting, naturally, in disputed facts, the court is obligated to enquire into the matter and decide based on the evidence presented by the parties whether or not the Writ lies. Considering the nature and purpose of the Writ, the duty on the Court and on the State in this regard is substantial and cannot be lightly discharged.

Learned Counsel for the 1st Respondent argued that the Petition of the Petitioner has not been filed in compliance with Rule 3 (1) (a) of the Supreme Court Rules the Court of Appeal (Appellate Procedure) Rules 1990.

Rule 3 (1) (a) of the Supreme Court Rules the Court of Appeal (Appellate Procedure) Rules 1990 states thus;

"3. (1) (a) Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 and 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application or duly certified-copies thereof in the form of exhibits. Where the petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such documents later. Where a petitioner fails to comply with the provisions of this rule the Court may, ex mero motu or at the instance of any party, dismiss such application."

The Document marked as P 8 appears to be a computer-generated document which has been true copied by an Attorney-at-Law which is contrary to Rule 3 (1) (a) of the Supreme Court Rules the Court of Appeal (Appellate Procedure) Rules 1990 as set out above.

The Document P 11 which is referred to in Paragraph 18 of the Petition and Paragraph 19 of the corresponding Affidavit and pleaded as part and parcel thereof is not certified, wholly illegible and is referred to as a "a photograph copy of what the Petitioner verily believes to be the information page of the said British Passport of the 1st Respondent...". The Petitioner has not averred the means by which a "photograph copy" of the purported British Passport of the 1st Respondent has come within the possession of the Petitioner. While it is obvious that the said "photograph copy" is not an original document, it is not, in the very least, a certified copy of the original, and the Petitioner has not stated the reason for his inability to furnish the requisite certified document. Therefore, it cannot be accepted as part and parcel of the Petition.

The last document mentioned in the Petition is P-12 which is referred to in Paragraph 19 of the Petition, however, documents marked P-13, P-14 and P-15 have been attached as annexures to the Petition, although there is no reference to P-13, P-14 and P-15 in the Petition that has been served on the 1st Respondent. Accordingly, these documents so annexed have not been properly pleaded by the Petitioner, nor in the very least been certified as true copies. Therefore, the same cannot be accepted as part and parcel of the Petition.

The judgement of Justice A. L. Shiran Gooneratne in **Sharmila Roweena Jayawardena Gonawela Vs. Hon. Ranil Wickreasinghe and Others**¹ further substantiates the gravity of the Preliminary Objection set out above. This is a case where the Petitioner sought a mandate

¹ (CA/WRIT/388/2018, CA minutes 21.05.2019)

in the nature of a Writ of Quo Warranto against Hon. Ranil Wickremasinghe while he held the office of Prime Minister of the Republic of Sri Lanka. Among the Preliminary Objections raised on behalf of the 1st and 2nd Respondents in the instant case, one such Preliminary Objection was that the Petitioner had failed to comply with Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990.

The Court of Appeal, having considered the implications of allowing a faulty application, upheld the Preliminary Objection and stated thus;

"The Court of Appeal Rules make provision, under Rule 3(1)(a), for a Petitioner to tender originals of documents or certified copies thereof in support of the averments contained in an application to exercise powers vested in this Court by Articles 140 and 141 of the Constitution. The documents marked P6(a)-(e) and P7 (a)-(e), attached to the affidavit, are not original documents or certified copies of original documents. The failure to comply with the said Rules remains unexplained. The Rule relating to the discretion of Court in consideration of surrounding circumstances, as noted above, in my view, cannot be outweighed by considerations which disregard the objective of the Rule. I observe that there is a clear and consistent non-compliance of the said Rule in the application submitted to Court. Accordingly, the Petitioner has failed to satisfy the procedure for invoking the writ jurisdiction of this Court, the strict compliance of which is imperative."

"For the reasons aforementioned, I uphold the preliminary objection raised by the Respondents and dismiss the Petitioner's Application for non-compliance with Rule 3(1)(a) of the Court of Appeal Rules."

It is significant to note that the Hon. Judges of the Court of Appeal in the aforesaid judgement considered the submissions on the part of the Petitioner with regard to certain documents that were contended to be electronically accessible public documents which do not require further proof in terms of Section 5(1)(a) of the Evidence (Special Provisions) Act No. 14 of 1995, and held that the Petition of the Petitioner in the aforesaid case was not in compliance with Rule 3(1)(a).

Further, to the above, the case of **Brown & Co. Ltd. and Another Vs. Ratnayake (1994)**² cited in **Sharmila Roweena Jayawardena Gonawela Vs. Hon. Ranil Wickremasinghe and Others (Supra)** opined as follows;

"...The burden of presenting a proper application is on the party that seeks the intervention of the Court. The procedure is specified for this threshold stage. The Rule regulates the mode of enforcing a legal right. The Petitioner had to tender all relevant material to the Court in order to invoke its jurisdiction. If he fails to do this, there is a failure to comply with a substantial aspect of the Rule."

On behalf of the 1st Respondent, it was further argued that due to the reasons set out above, the Petition of the Petitioner should be dismissed *in limine* for failure to comply with Rule 3 (1) (a) of the Supreme Court Rules as the Petitioner has failed to act as a prudent person seeking the intervention of the Court of Appeal.

It is trite law that whenever facts are in dispute the Writ jurisdiction of this Court under and in terms of Articles 140 and 141 of the Constitution of the Democratic Socialist Republic of Sri Lanka will not apply.

The following case law authorities of the Supreme Court and Court of Appeal are in support of this submission.

It was held in **Thajudeen Vs. Sri Lanka Tea Board and Another**³, the Petitioner, who has been registered as a Manufacturer in terms of the provisions of Sec. 6, Tea Control Act No. 51 of 1957 in respect of the Amugala Tea Factory at Danture, Kadugannawa, had instituted proceedings for a Writ of Mandamus to compel the Respondents to pay a sum of money which the Petitioner stated, the Respondents were obliged to pay in terms of a "Guaranteed Minimum Price Scheme for Green Tea Leaf" operated by the Respondents and the Respondents denied.

While dismissing the Petition, Court held "In this view of the matter, it appears to me that, as the major grounds of fact, upon which the Petitioner's claim for the payment of the sum of money in question are founded, are being disputed by the Respondents, and, as the most appropriate procedure for the settlement of such a dispute is an action by way of regular procedure before the appropriate Court of First Instance, and such an action by way of regular procedure also constitutes an "equally convenient, beneficial and effective" remedy, this Court

² 3 SLR 91 at 99-100

³ [C. A. Application 1596/77, CA Minutes 03/12/1980 and 13/02/1981]

should, in the exercise of its discretion, refuse the Petitioner's application. It is, therefore, not necessary to consider the Respondents' other grounds of objections."

It was held in **Dr. Puvanendran and Another Vs. Premasiri and Two Others**⁴ is as follows;

The Petitioner in this case sought a Writ of Mandamus from the Court of Appeal seeking to compel the Registrar of Lands to remove an entry in the records of the Land Registry on the basis that the Petitioner is the legal owner of the premises in question and the Registrar had wrongly inserted a different name as the owner of the property. The Petitioner contended that the Registrar refused to remove the impugned entry. The Court of Appeal refused to grant the right of mandamus on the ground that there were disputed questions of fact. Court further held;

"Thus, the writ of mandamus is principally a discretionary remedy a legal tool for the dispensation of justice, but no other remedies available. The power of such remedy, the common law surrounding this remedy requires multiple conditions that must be met prior to the issuance of a Writ by Court. Such as;

- i. the major facts are not in dispute and the legal result of the facts are not subject to controversy (vide **Thajudeen vs. Sri Lanka Tea Board and Another**) and
- ii. the function that is to be compelled by the rich is a public duty with the power to perform such duty (vide **Hakmana Multi-purpose Cooperative Society Ltd. v. Ferdinando and Silva v. Ambawatte**)
- iii. **Wijenayake and Others Vs. Minister of Public Administration**⁵

In this case, the Court of Appeal cited with approval the case of **Dr. K. Puvanendram and Another vs. TM, Premasiri and Two Others (Supra)** and held thus;

"The Petitioners' complaint very briefly is that the property belonging to the Petitioners are included in the camp area in the Gazette produced in this application and such publication is ultra vires the powers of the Minister in terms of the Pilgrims Ordinance. Such a publication however would not affect the rights of the Petitioners as far as the title of the property. If in, fact private property belonging to the Petitioners are included in the camp area, I see that there is merit in the submission of the Petitioners and the

⁴ [SC 59/2008, SC Minutes 23/10/2008]

⁵ 2011 (2) Sri. LR 247 CA 255/2008, CA Minutes 20/11/2008 and 17/03/2008]

Gazette is liable to be quashed. However, the material furnished suggests that a title / boundary dispute is agitated before the Kurunegala District Court. As such finality subject to appeal of title and boundary of the land in dispute lies in the action filed in the district Court of Kurunegala. These are all disputed fact which cannot be decided in a Writ Court, of the Court of Appeal.

In the event the Petitioners succeed in the original court, I see no reason to prevent the Petitioners to move the Court of Appeal to get the relevant gazette quashed. However, in the application before us Petitioners do not give a clear indication regarding title to the property in dispute. If the title to the property in dispute and the boundaries are correctly defined Petitioners would be in a better position. In the absence of material in this regard I am reluctantly compelled to refuse this application." [emphasis added]

Liyana Atukoralalage Done Thanuja Darshini and 8 Others Vs. Ceylon Electricity Board and 21 Others⁶;

Following the refusal of to grant a Writ of Certiorari, the Court held in line with the authorities set out above, and held;

"...there is no agreement between the parties as to the exact number of vacancies existed at the date of the interview for 2015. Nor is in the document(s) by which Court can without any difficulty come to a firm finding on the exact number of vacancies existed at the date of the interview. The documents give different figures and open for various interpretations.

If facts are in dispute, this Court in the exercise of Writ jurisdiction has no authority to hold an inquiry into it in order to ascertain the correct factual position (Le. of the number of vacancies) in order to grant or refuse relief to the Petitioners. It is trite law that when major factors are in dispute, Writ does not lie (*Thajudeen vs. Sri Lanka Tea Board [1981] 2 Sri LR 471, Dr. Puvanendran v. Premasiri [2009] 2 Sri LR 107, Wijenayake v. Minister of Public Administration [2011] 2 Sri. LR 247*). Hence the petitioners cannot succeed in this application."

Accordingly, the 1st Respondent, states and refers to the following facts that are clearly in dispute;

⁶ [CA/WRIT/410/2016, CA Minutes 22/05/2019]

- a. The averments contained in Paragraph 6 of the Petition have been specifically denied by the 1st Respondent in Paragraph 10 of the 1st Respondent's Statement of Objections and corresponding Affidavit. The 1st Respondent specifically denies being a British Citizen, specifically denies that the 1st Respondent has submitted forged documents to the authorities, is not entitled to be an elector, was not qualified to be elected as a Member of Parliament, and that the 1st Respondent is disqualified from holding office as a Member of Parliament. The 1st Respondent states that this Respondent is a Member of Parliament by virtue of Gazette Notification bearing No. 2188/46 of Friday, 14.08.2020, a Gazette issued by the Chairman and Members of the then Election Commission declaring the 1st Respondent as a person elected as Member of Parliament under Article 99A of the Constitution.

The Petitioner, himself, has provided this Court with the authority under which the 1st Respondent derives authority to hold office as a Member of Parliament.

- b. The averments contained in Paragraph 16 of the Petition have been specifically denied in Paragraph 16 of the 1st Respondent's Statement of Objections and only the National Identity Card number of the 1st Respondent and the Certificate of Birth bearing, No. 4683 have been admitted out of the averments contained in the aforesaid paragraph of the Petition. Whilst the rest of the averments have been denied, whereby disputed, and the averment that Sri Lanka Passport bearing No. N 5091386 has been obtained by submitting a Certificate of Birth bearing No. 6553 has been totally denied and the 1st Respondent, in Paragraph 17, has averred that the Certificate of Birth bearing No. 6553 is a forged document.
- c. The Statement of Objections of the 2nd, 3rd and 15th, Respondents supported by the 3rd Respondent's Affidavit has answered Paragraph 16 of the Petition in Paragraph 13 of the said Statement of Objections. While admitting only the case record in Colombo Magistrate's Court case bearing No. B43037/01/2021 and stating that document P-10(a) is an incomplete document and that P-10(b) had not been served on the said Respondent, the rest of the averments of Paragraph 16 have been denied.

As such the rest of the facts contained in Paragraph 16 of the Petition have been disputed by the 2nd, 3rd and 15th Respondents.

- d. The entirety of the averments contained in Paragraph 18 of the Petition has been denied by the 1st Respondent. The Petitioner has not provided any proof to maintain or establish the several averments / allegations / contentions contained in the said paragraph. The 2nd, 3rd and 15th Respondents Statement of Objections have also denied the averments contained in Paragraph 18, as such, the facts are entirely disputed facts as is clearly established.
- e. The 1st Respondent further states that this Respondent only admits that the Certificate of Birth bearing No. 6553 is a forgery, however, it is submitted on behalf of the 1st Respondent that she had never been in possession of the said forged Certificate of Birth, nor has she ever tendered such a document to any person.
- f. The 1st Respondent's position in this regard has been further substantiated by the learned Deputy Solicitor General who appeared on behalf of the Hon. Attorney General before the Colombo Magistrate's Court in case bearing No. B43037/01/2021. The learned Deputy Solicitor General informed court that there is a record of the 1st Respondent handing over the Certificate of Birth bearing No. 4683 and that the Receiving Officer attached to the Department of Immigration and Emigration has also noted the receipt of the said Certificate of Birth bearing No. 4683. However, much to the shock and surprise of the 1st Respondent, the document presently scanned and available at the Department of Immigration and Emigration is the Certificate of Birth bearing No. 6553.
- g. The averments contained in Paragraphs 20 and 21 have been. denied by both the 1st Respondent and the 2nd, 3rd and 15th Respondents, and since the Petitioner has failed to provide any proof to substantiate the averments/allegations/contentions, such facts continue to remain as disputed facts.

The major facts pertaining to the instant Application before this Court, as set out above, are disputed and in issue, therefore, it is clear that the Writ jurisdiction vested in this Court under and in terms of Article 140 of the Constitution cannot be relied upon by the Petitioner to, not only circumvent the matters that are already being investigated into by the Magistrate's Court of Colombo in case bearing No. B43037/01/2021 but also to prejudicially affect the 1st Respondent's right to a fair hearing before the Magistrate's Court of Colombo in the event she is named as a Suspect and an Accused.

The learned President's Counsel for the 1st Respondent submitted on behalf of the 1st Respondent that this Respondent holds office as a Member of Parliament by virtue of No. 2188/46 of Friday, 14.08.2020, a Gazette issued under the hand of the Chairman and Members of the then Election Commission (Document marked P-6- of Petition), the 1st Respondent will continue to hold such office until Parliament is dissolved or by a Gazette Notification issued by the Election Commission amending the Gazette Notification P-6 insofar as the removal of the 1st Respondent's name from the said Gazette Notification.

Such a relief has not been prayed for by the Petitioner in his Petition in the instant Application before this Court, therefore, whilst the Gazette Notification marked and produced as P 6 before this Court remains in force, granting the relief as prayed for by the Petitioner will not remove the 1st Respondent as a Member of Parliament. As such, any relief prayed for by the Petitioner in the instant Application would be a futile exercise.

Accordingly, the Petition of the Petitioner should be dismissed due to the lack of specificity of prayer alone, as no relief has been sought against the Elections Commission of Sri Lanka.

The Indian Judgement of *Jahruddin Vs. Magutumsab LAWS(KAR)-1997-9-2* is cited to bolster the submissions on behalf of the 1st Respondent;

"In any case pleading is important and it should be specific, clear, categoric and shall not afford any room for doubt. If the pleading is not clear, a decision based on such pleading would tend to lead to ambiguous decisions. It is true that the substance of the pleading is to be considered and not merely jugglery of wordings. May be in the form of the pleadings, a plaintiff may not be able to express, in the language used by him what he wants, but the prayer should be specific so that when the prayer is granted, a decree, to be drawn as per such prayer, should be unambiguous, clearly acceptable and make the relief reach the decree holder. Otherwise, the entire exercise of conducting a case up to the level of highest court would become a farce. Real meaning of the rights between the parties should be spelt and understood in a proper perspective.

The same has been held in Sri Lankan judgements such as the decision in *Dayananda v. Thalwatte (2001) 2 SLR. 73/ and Environmental Foundation vs. Commissioner of Buddhist Affairs*⁷ which lays down that the prayer in a Writ Application must be set out with precision and clarity.

⁷ [(C.A. (Writ) 243/2017, C.A. Minutes 07.11.2017)]

In any event, the judgement of Justice Marsoof, P.C., President Court of Appeal (as he was then) in **Ratnasiri and Others Vs. Ellawala and Other /2004] 2 Sri. LR 180** is of great value to further illustrate the manner in which the instant Application before this Court will be rendered nugatory and futile even in the event that this Court is inclined to grant the relief prayed for by the Petitioner.

In **Ratnasiri and Others Vs. Ellawala and Other (supra)** their Lordships held thus;

"It is futile to issue a writ, since what is sought to be quashed therein is the decision said to have been made by the Trial at Bar (TAB), however the 4th respondent to whom the power of transfer has been delegated by the PSC has approved and adopted the decision of the TAB. No relief has been sought against that decision; therefore, it would be futile to grant the reliefs prayed for since it would still leave intact the decision of the 4th respondent... "

"...No relief has been sought against that decision although the petitioners were aware of it having received P2 and P5. In these circumstances, it would be futile to grant the relief prayed for since it would still leave intact the decision made by the 4th Respondent. In the circumstances the court has to uphold the preliminary objection taken up by the respondents on the basis of futility."

It is reiterated on behalf of the 1st Respondent that the Petitioner in the instant matter has not sought specific relief against the Elections Commission of Sri Lanka. In these circumstances, until and unless the authority bestowed on the 1st Respondent under and in terms of Gazette Notification bearing No. 2188/46 of Friday, 14.08.2020 to hold office as a Member of Parliament, is specifically revoked by the said Commission, the 1st Respondent will continue to hold such office.

The Petitioner cannot compel this Court to order the Elections Commission of Sri Lanka to revoke the aforesaid Gazette in the absence of a prayer in the Petition of the Petitioner specifically urging this Court to do so as was held in the case of **K. Gunapalan and Others Vs. Hon. Minister Rural Economic Affairs**⁸.

On 24.04.2023 by delivering an order the Chief Magistrate of Colombo further held that the arrest order will not be issued for the arrest of the 1st Respondent. The learned Magistrate stated that he is making this order as the Criminal Investigation Department has the power to take

⁸ [CA WRIT Application No. 431/2016, CA Minutes 25/09/2023

measures related to the arrests under the offenses of the Immigration Act. The proceedings before the Chief Magistrate's Court of Colombo have since been laid by.

The decision of the learned Magistrate in not issuing a warrant for arrest is keeping in line with numerous decisions of this Court in which this Court, in applications for judicial review, have considered whether a Magistrate has the power to issue a warrant of arrest even in cases where the Police can make an arrest without a warrant. These decisions have ultimately led to the quashing and staying of orders of arrest issued by the Magistrate's Court.

The 1st Respondent draws the attention to the decisions of this Court in **C.A. (Writ) Application No.63/2020 [Sandesh Ravindra Karunanayake Vs. Hon. Attorney general and 5 Others], CA. (Writ) 216/2020 [Adikari Mudiyanseelage Chaminda Bandara Adikari Vs. A. M. Kapila Adikari and 5 Others]**, and the most recent decisions in the cases concerning the summoning of Dappula De Livera former AG before the TID and the arrest of Senior DIG Deshabandu Tennakoon. In addition to the aforesaid, the learned President's Counsel who is appearing on behalf of the 1st Respondent says that he has cooperated with the investigating authorities throughout the investigative process and has provided statements whenever this Respondent has been called upon to be present before the CID to record a statement.

Furthermore, it can be reasonably assumed that the CID is not satisfied that there is *prima facie* evidence of an offence, as alleged by the Petitioner, committed by the 1st Respondent or that there is *prima facie* suspicion of the same, as the 1st Respondent has not been arrested to date or named as a suspect in the Magistrate's Court case. Therefore, it is clear that the Petitioner is attempting to circumvent the ordinary course of criminal procedure and compel this Court to make an order that would in effect bring ruin and disrepute to the 1st Respondent based on claims made *argumentum ad hominem*.

In these circumstances it is legally untenable and indefensible to issue a Writ of Quo Warranto especially considering the fact that key facts remain in dispute and the investigation has not even passed the threshold stage of making the 1st Respondent a suspect or arresting the 1st Respondent on the grounds of reasonable suspicion.

What has been sought from the Court of Appeal is a Writ of Quo Warranto and it is established that such writs are discretionary remedies of Court. Even if this Court was to find in favour of the Petitioner, as the relief sought are discretionary remedies, Court is bound to consider whether the Petitioner has satisfied court, as regards the grounds on which a Writ of Quo Warranto was sought. Even if such grounds to issue a Writ of Quo Warranto could be

established, Court has also to consider whether the Petitioner is disentitled to the relief prayed for even if the grounds of issuing a writ are satisfied, due to the discretionary nature of the remedy. It is common ground that courts are reluctant and had on numerous occasions refused to issue prerogative Writs if it could be established and Petitioners are guilty of or disentitled to the remedy, based on;

- a. Laches/undue delay
- b. Wilful suppression/misrepresentation of material facts
- c. Acquiescence
- d. Grave public/administrative inconvenience
- e. Futility
- f. Availability of alternative remedy
- g. *Locus standi*

On the strength of the matter's setout hereinbefore, this application should be dismissed in limine. It is also submitted on behalf of the 1st Respondent that the Petitioner has seriously misled himself on the manner in which evidence ought to be considered in criminal proceedings. The Petitioner is before this Court, demanding a Writ of Quo Warranto be issued against the 1st Respondent without evidence.

The Petitioner has relied on certain police statements made by the Deputy Controller of the Department of Immigration and Emigration and the 1st Respondent to underpin the Petitioner's contention that the 1st Respondent is a British Citizen. However, as this Court is no doubt aware, these police statements do not amount to evidence as admissible under and in terms of the Evidence Ordinance, these statements relied upon by the Petitioner when weighed against the Affidavit of the Controller General of Immigration and Emigration the 3rd Respondent amount to naught as the said Affidavit, which is before this Court and meets the threshold of admissibility, represents the position of the 3rd Respondent.

The 1st Respondent refutes certain matters that have been unearthed during the investigative process. The safeguards on admissibility of evidence are to prevent casual or perfunctory decision making that is precipitous and more knee jerk reactions based on emotive issues or misplaced perceptions of where equity lies. There cannot be unilateral perspectives that consider only the benefit of the Petitioner.

This Court will take due consideration of the matters of Law and fact that have been morefully adverted to, through the lens that Prerogative Writs cannot be issued as of right or as a matter

of course, due to its discretionary nature. A court has to examine any Writ application, having considered the merits of the case and the question of an issuance of a Writ apart from the Petitioner's *ipse dixit*, the Petitioner does not have an iota of evidence that would substantiate his claim against the 1st Respondent. The Petitioner has come before this Court without any prudence, while failing to comply with the Supreme Court Rules.

Therefore, it is clear beyond any reasonable doubt that this entire application before this Court is a blatant show of the *mala fides* on the part of the Petitioner. The Petitioner is before this Court with malintent, in a vexatious attempt to bring disrepute to the 1st Respondent and tarnishing her good name, in pursuit of the Petitioner's personal agenda.

In the totality of the foregoing circumstances, the Petitioner is not entitled to any of the relief sought before this Court, and the 1st Respondent moves that this Court to dismiss this Application, which is without any legal basis or merit.

The conditions required to apply to the court to issue a Writ is restricted in several ways. There is no bar or restriction on who can apply. Any person can apply as long as their fundamental or any other legal right is being breached. In cases where there is no breach of right, a question of public interest must arise with respect to the application. It should not be made for the sake of certain hidden political struggle or undercurrent. The applicant should act in public interest, and not expect any benefit or unethical gain through making the application. The application made by the applicant should be *bona fide*.

A Writ is only granted to compel the performance of duties of a public nature and not merely of a private character, that is to say for the enforcement of a mere private right stemming from a contract of the parties. The Petitioner has failed to satisfy this court that he has a statutory right against the 1st Respondent.

The preliminary objections are upheld. Accordingly, we see no merit in the Application of the Petitioner. For all the above reasons, this court is not disposed to grant the discretionary remedy asked for.

The application of the Petitioner is an action of private nature and therefore not governed by any statutes of the Democratic Socialist Republic of Sri Lanka. As such the Petitioner is not entitled to invoke the Writ jurisdiction of this Court against the 1st Respondent.

The merits of the case also do not warrant the issuance of the Writ prayed for. As such the Petitioner's application warrants dismissal.

Application dismissed with cost.

President of the Court of Appeal

K.K.A.V. Swarnadhipathi J.

I agree

Judge of the Court of Appeal

M.A.R. Marikar J.

Introduction

- 1) The Petitioner had made this Application to grant and issue a mandate in the nature of Writ of Quo Warranto to show the authority under which the 1st Respondent claims to hold office as a Member of Parliament.
- 2) This Application was taken up for argument on 18th May 2023 and concluded the argument on the same day. The Petitioner, 1st Respondent and 2nd, 3rd, 5th Respondents submitted their Written Submissions. The judgement for the said Application was due on 25th July 2023. As the sitting judges were not in agreement of the judgement to be pronounced, a Divisional Bench of three judges was appointed.
- 3) I had the privilege of reading the judgement of Justice Bandula Karunaratne, the President of the Court of Appeal pertinent to the Application made by the Petitioner dated 14th November 2022.

- 4) In considering the Application pertinent to the Petition dated 14th November 2022, the Petitioner had sought the following reliefs;
- a) Issue notice on the Respondent,
 - b) Call for and examine the record pertaining to the subject matter of this Application,
 - c) Grant and issue a mandate in the nature of a Writ of Quo Warranto requiring the 1st Respondent to show by what authority she claims to hold office and continues to function as a Member of Parliament of the Democratic Socialist Republic of Sri Lanka,
 - d) Grant and issue a mandate in the nature of a Writ of Quo Warranto declaring that the 1st Respondent is disqualified to be a Member of Parliament and is thus not entitled to hold office as a Member of Parliament of the Democratic Socialist Republic of Sri Lanka,
 - e) Grant and issue a Direction to the 3rd Respondent to submit to the court all documentation relating to the status of residence and citizenship of the 1st Respondent,
 - f) Grant costs, and
 - g) Grant such other and further relief as to this court seems meet

Facts of the Case

- 5) The Petitioner being a citizen of Sri Lanka had instituted this action to obtain an order from this Court, and impugned the rights and entitlement of the 1st Respondent to be elected and continue to function as a Member of Parliament of Sri Lanka as the 1st Respondent does not hold citizenship rights of the Democratic Socialist Republic of Sri Lanka.
- 6) Further, as the 1st Respondent does not have the citizenship of the Democratic Socialist Republic of Sri Lanka, although she has taken oaths as a Member of Parliament of Sri Lanka and is holding the portfolio of the State Minister of Tourism, is not entitled to hold the said office as she is not a citizen of Sri Lanka.
- 7) The Petitioner has reiterated that the 1st Respondent is a British Citizen and the holder of British Passports bearing Nos. 094425352 and 521398876, and further, the Petitioner had contended that only a British Citizen can hold a British Passport.

- 8) In the said circumstances, the 1st Respondent by virtue of becoming a citizen of another country will be ceased to be a Sri Lankan Citizen. In order to overcome this the 1st Respondent has not obtained dual citizenship or any other form of citizenship in Sri Lanka.
- 9) Subject to the aforesaid position, the Petitioner had contended, that a General Election was held on 5th August 2020. At the said General Election, the Party formed by the Samagi Jana Bala Vegaya had secured 54 Parliamentary seats inclusive of 7 National List Members.
- 10) The 1st Respondent was appointed as a National List Member of Parliament by the Samagi Jana Bala Vegaya. Subsequently, the 1st Respondent had voted contrary to the principles of the Samagi Jana Bala Vegaya.
- 11) The 1st Respondent was appointed as the State Minister of Tourism on 18th April 2022. The Petitioner had vehemently objected for the 1st Respondent holding the said position as she is not a citizen of Sri Lanka.
- 12) The contention of the Petitioner is that the 1st Respondent had travelled to Sri Lanka many times using the British Passports bearing Nos. 094425352 and 521398876. Later, she had obtained a Sri Lankan Passport bearing No.5091386 using a birth certificate bearing No.6553 and an identity card bearing No.658534300 without disclosing the British Citizenship.
- 13) The Petitioner had further stated that the 1st Respondent had obtained an official Passport bearing No. OL5654794 using a birth certificate bearing No.4683.
- 14) The facts related in the birth certificates bearing Nos. 6553 and 4683 are contrary to one another and further, in the birth certificate bearing No.6553 the Division given does not exist. In the birth certificate No.4683 the name had been changed several times from 2003 to 2014. In the said circumstances, the Petitioner had stated that these are forged documents tendered by the 1st Respondent. The B Report had been filed and investigations had commenced against the 1st Respondent in the Chief Magistrate's Court of Colombo.
- 15) In view of the aforesaid facts, the Petitioner had sought a Writ of Quo Warranto to disqualify the 1st Respondent from being a Member of Parliament and for the 1st Respondent to show the authority by which she claims to hold office and continue to function as a Member of Parliament of Sri Lanka.

The Statement of Objections Filed by the 1st Respondent

- 16) The 1st Respondent had denied the allegations made against her by the Petitioner and had further stated that the Criminal Investigation Department had filed the Case No. B48037/01/2021 and named her as a suspect. However, as that case is not concluded yet, the Constitutional guarantee or the presumption of innocence is applicable for the 1st Respondent. Beside that the 1st Respondent has emphasized that the summary statements of the witnesses are not evidence according to law and it is only a statement filed by the Criminal Investigation Department before the Court.
- 17) The 1st Respondent answering to the facts related to her birth certificate which is related to a passport obtained by her, had denied that at no stage had she tendered the said birth certificates where the details relating to the 1st Respondent's name and the parents' names of the 1st Respondent are false, and had challenged the documents maintained by the 3rd Respondent Department.
- 18) In the said circumstances, the 1st Respondent had moved to dismiss the Petition of the Petitioner.

The Statement of Objections Filed by the 2nd, 3rd and 15th Respondents

- 19) The 3rd Respondent had contended that whatever documents in the custody of the 3rd Respondent will be produced when requested by the Court.
- 20) The 3rd Respondent had further stated that they do not have an application form for a resident visa for the Passport No.521398876 as the Department of Immigration and Emigration have visa documents scanned only from the year 2017.
- 21) The 3rd Respondent has annexed R1, R2, and R3 passports exit and entry details which had appeared in the Border Control System. The 3rd Respondent was not aware of the facts related to the Passport Holder No.521398876 which is marked as R4.
- 22) In paragraph 17(xi), the 3rd Respondent had emphasized that the Department of Immigration and Emigration had not issued any citizenship certificate to the 1st Respondent.
- 23) On the aforesaid grounds, the 2nd, 3rd and 15th Respondents had stated that they were added as parties without any legal basis.
- 24) On that, they have moved to dismiss the Petition of the Petitioner.

The Statement of Objections Filed by the 4th Respondent

- 25) The 4th Respondent had contended that the 1st Respondent had obtained local passports tendering forged birth certificates. The Controller, Visa and Border Control, Department of Immigration and Emigration had stated that from the year 2004 until 16th July 2016, the 1st Respondent had obtained visit visa using her British Passport No.521398876.
- 26) Further, the Deputy Commissioner of Registration of Persons had stated that the 1st Respondent had not obtained dual citizenship. Further, a Sri Lankan obtaining a foreign citizenship will lose the local citizenship unless he/she obtains the dual citizenship.
- 27) The 4th Respondent had stated that by R1 and R2 documents, the British Nationality of the 1st Respondent is further confirmed.
- 28) In the said circumstance, the 4th Respondent had sought the reliefs prayed for in the Petition of the Petitioner dated 14th November 2022.

Disputed Facts

- 29) Considering the facts pertinent to the Petition made by the Petitioner and the Statement of Objections filed by the 1st Respondent, 2nd, 3rd, 15th Respondents and the 4th Respondent and on perusal of the documents, Written Submissions and the facts argued by the Counsels for the Petitioner and the Respondents on 14th September 2023, in the instant case, I am of the view that to arrive at my conclusion the following questions should be addressed.
 - I. Has the 1st Respondent been appointed as a Member of Parliament of the Democratic Socialist Republic of Sri Lanka and appointed as the State Minister of Tourism?
 - II. Is the 1st Respondent a citizen of Sri Lanka?
 - III. If not, can the 1st Respondent be a Member of Parliament of the Democratic Socialist Republic of Sri Lanka?
 - IV. If the above dispute (III) is answered in the affirmative, is the Petitioner entitled to get reliefs under Writ of Quo Warranto?
 - V. If so, is the duty cast upon the 1st Respondent to prove her legal rights to hold the office as a Member of Parliament?
 - VI. If not, is the Petitioner entitled for the reliefs claimed in the prayers of the Petition dated 14th November 2022?

I. Has the 1st Respondent been appointed as a Member of Parliament of the Democratic Socialist Republic of Sri Lanka and appointed as the State Minister of Tourism?

- 30) There is no dispute that the 1st Respondent is appointed as a National List Member of Parliament by the Samagi Jana Bala Vegaya. That fact is proven by the Gazette Notification No.2188/46 dated 14th August 2020 which is marked and produced as P6.
- 31) The said fact is not challenged or disputed by the Respondents. Therefore, it is a proven fact that the 1st Respondent is a National List Member of Parliament of the Democratic Socialist Republic of Sri Lanka.
- 32) After the 1st Respondent was appointed as a National List Member to the Parliament, the Petitioner had brought to the notice of the court in paragraph 14 of the Petition dated 14th November 2020, that the 1st Respondent was initially appointed as the State Minister of Transport and subsequently, the said portfolio was changed and she had been appointed as the State Minister of Tourism.
- 33) The aforesaid facts are supported by the Gazette Notifications No.2276/64 dated 22nd April 2022 and No.2297/46 dated 14th September 2022. The said two Gazette Notifications are marked and produced as P9(a) and P9(b). The said appointments of the 1st Respondent are not disputed by the other Respondents.
- 34) In the said circumstances, the position taken by the Petitioner states that the 1st Respondent is a National List Member of Parliament and the State Minister for Tourism can be admitted.

II. Is the 1st Respondent a citizen of Sri Lanka?

- 35) The crux of the Application made by the Petitioner is to decide whether the 1st Respondent is a citizen of Sri Lanka and if not, is she entitled to be nominated as a National List Member of Parliament of Sri Lanka.
- 36) The Counsel for the Petitioner in his argument raised several points with regard to the fact that the 1st Respondent does not have any citizenship rights in Sri Lanka. Among the said points, the Counsel for the Petitioner emphasized on the following points to be considered.
- (i) Two British Passports Nos. 094425352 and 521398876
 - (ii) Obtained 3 Sri Lankan Passports by the 1st Respondent without revoking the British Citizenship

- (iii) As per the provisions related to the Citizenship Act, No. 18 of 1948⁹, the 1st Respondent had not taken any steps to renounce the British Citizenship as her mother is a descent from Britain. The said provisions are referred to in Section 5(i), Section 8(i), Sections 20(ii), (v) and (vi) of the Citizenship Act.
- 37) The dual citizenship was not obtained by the 1st Respondent as per the statement made to the Criminal Investigation Bureau on 31st October 2022.
- 38) Although the said position taken by the Petitioner was rejected by the 1st Respondent, when observing the objections tendered by the 1st Respondent, the 1st Respondent had not challenged the documents marked and produced by the Petitioner and the 4th Respondent.
- 39) However, I will deal with these facts later. At the outset, pertinent to the aforesaid issues, as I have not agreed with my brother judge, I have to consider the facts pertinent to the documents tendered by the Petitioner, the 3rd Respondent and the 4th Respondent to see whether the 1st Respondent is a citizen of Sri Lanka to proceed with the Writ of Quo Warranto Application.
- 40) The foremost question that had arisen in this Application is the British Citizenship of the 1st Respondent. To support that the Petitioner had submitted P11 document which is a photocopy of the British Passport of the 1st Respondent.
- 41) The Counsel appearing for the 1st Respondent took a preliminary objection that the document marked and produced as P11 is a photocopy, therefore, in a Writ Application that document cannot be accepted.
- 42) The P11 photocopy of the passport refers to Passport No.521398876. The 3rd Respondent had submitted R4 document which contains the same passport number and the same name of the 1st Respondent. Although the document marked and produced as P11 is a photocopy, the R4 document which is marked and produced by the Attorney General reiterates the same facts as related in P11.
- 43) The Counsel appearing for the 3rd Respondent had contended that without a proper investigation at this stage, the 3rd Respondent cannot verify the Diana Gamage referred to in R4 is the same Diana Gamage referred to as the 1st Respondent.
- 44) At this stage, I am returning to the main question of the Application of the two British Passports Nos. 094425352 and 521398876 referred to by the Petitioner. In referring to the said two British Passports, I draw my attention to the document marked and

⁹ Hereinafter referred to as Citizenship Act.

produced as P12 which is again marked as Z1 by the Petitioner with the Written Submissions.

- 45) The said document is the case record of Case No. B48037/01/2021 of the Chief Magistrate's Court of Colombo. It contains an Order delivered by the Chief Magistrate dated 4th April 2023. In the said order the learned Magistrate has referred to the statements made by Hansika Mihiri Kumarasinghe of the Immigration and Emigration Department. Further, he had stated on page 5, 2nd paragraph of the said Order that the said Hansika Mihiri Kumarasinghe had stated that Diana Gamage had made use of the British Passport Nos. 094425352 and 521398876 and travelled to Sri Lanka during 5th October 2014 and 16th July 2015 and had travelled several times obtaining the Sri Lankan Visa.
- 46) Further, on the same page on paragraph 3, the Magistrate had noted that the said Diana Gamage had obtained two Sri Lankan Passports Nos. N5091386 and OL5654794, at the time was using the British Passports.
- 47) Although the Chief Magistrate has not given any direction with regard to those statements, these facts are reported in his Order dated 24th April 2023.
- 48) Now, I draw my attention to the document marked and produced as X1. The said document is the statement made by the 1st Respondent to the Woman Police Constable Sashikala. In the objection filed by the 1st Respondent, she refers to the summary statement of witnesses and argues that it is not evidence according to the law and it is only a statement filed by the Criminal Investigation Bureau to the court. The President Counsel Shavindra Fernando who appeared for the 1st Respondent vehemently argued that the statement made by the 1st Respondent cannot be used against her according to our law.
- 49) I agree with his point, if this is a criminal matter which is governed by the Criminal Procedure Code, Penal Code and Evidence Ordinance. However, this is a Writ of Quo Warranto Application. There is no provision in a Writ Application not to consider a legally valid document produced by a party. The provision for this Application is governed by the Article 140 of the Constitution of Sri Lanka. Any statutory provision cannot supersede the power granted under a Constitutional provision. Therefore, there is no obligation for the Court to consider provisions prevailing under the Criminal Procedure Code. However, decided cases have given the authority to consider judgments and literature related to the United Kingdom.

- 50) Beside the said facts, the 1st Respondent had not cited any authority where the said facts related in the X1 document cannot be considered with the other available documents and whether the Petitioner had put forward a *prima facie* case.
- 51) In the said circumstances, I draw my attention to the facts spelt out in the X1 document. In the last page of the X1 document, the 1st Respondent had admitted that she had used the British Passport Nos. 094425352 and 521398876 to obtain visa to travel to Sri Lanka.
- 52) When comparing the document marked and produced by the 3rd Respondent as R4, it contains the same passport numbers referred to by the 1st Respondent in her statement made to the Criminal Investigation Bureau.
- 53) Therefore, there is *prima facie* evidence to support the argument raised by the Petitioner that the 1st Respondent is not a Sri Lankan citizen.
- 54) On perusal of the document R1 marked and produced by the 4th Respondent with his objections, is a letter written by U.V. Sarath Rupasiri Controller General of the Department of Immigration and Emigration. The said objections were filed by the 4th Respondent on 9th January 2022.
- 55) The 3rd Respondent had filed his objection on 10th January 2023. However, the 3rd Respondent had failed to produce the said document and had failed to refer to the said document. In the said document the Controller General had specifically referred to that the 1st Respondent requested to obtain a Diplomatic Passport and, in his observation, he had stated that the 1st Respondent is not entitled to obtain the said Passport as she has not produced any document renouncing her British Citizenship. The 1st Respondent had not objected or denied the facts related in R1 document in her objections.
- 56) In considering all these documents, I am of the view, there is *prima facie* evidence put forward by the Petitioner, that the 1st Respondent had not obtained dual citizenship or she had not renounced her British Citizenship.
- 57) I will consider the facts pertinent to the argument raised by the Parties, the Citizenship Act, and the other documents under the upcoming disputed facts.

III. If not, can the 1st Respondent be a Member of Parliament of the Democratic Socialist Republic of Sri Lanka?

- 58) I have in the aforesaid paragraphs analysed that there is *prima facie* evidence put forward by the Petitioner that the 1st Respondent is not a citizen of Sri Lanka.

- 59) To be elected as a Member of Parliament of Sri Lanka, the said person must be a citizen of Sri Lanka. If not, a person cannot be elected as a Member of Parliament.
- 60) The Article 89 of the Constitution of the Democratic Socialist Republic of Sri Lanka is referred to as follows;
- “No person shall be qualified to be an elector at an election of the President, or of the Members of Parliament or to vote at any Referendum, if he is subject to any of the following disqualifications, namely –*
- (a) if he is not a citizen of Sri Lanka;”¹⁰*
- 61) In light of that, it is a mandatory position, whoever is to be elected as a Member of Parliament should be a citizen of Sri Lanka.
- 62) Other than denying the authenticity of the document produced to obtain the 1st Respondent’s local passports and challenging that the statements given to the Criminal Investigation Bureau cannot be used as evidence, the 1st Respondent had not taken any initiative to show any document that she is a citizen of Sri Lanka.
- 63) A Member of Parliament is either elected by an election and/or nominated as a National List Member. They represent the Parliament of Sri Lanka on behalf of the public. A Member of Parliament is paid a monthly stipend and duty-free benefits to obtain vehicles and after serving for five years is entitled for pension etc. All these remunerations are paid out of the tax payers’ money and public funds. Therefore, a Member of Parliament should be transparent to the public and should not hide their identity, leaving it to be uncovered only through the investigation of the said identity.
- 64) In such an occasion, the Petitioner as well as the public has a legitimate right to know that the people who are representing them in Parliament are the citizens of Sri Lanka. Otherwise, the public funds are utilized to pay the salary to an outsider who has not been elected or cannot be elected to the Parliament.
- 65) Thus, it is imperative for the 1st Respondent to show her credentials without any investigations to find out the truth. In the instant Application, the 1st Respondent had filed the Statement of Objections on 24th February 2023. In the said objections she has not stated or challenged the position taken by the Petitioner.

¹⁰ Constitution of Sri Lanka, Article 89(a).

- 66) It must be borne in mind that the 1st Respondent was a nominated Member of Parliament. Her Party was elected upon the franchise of the citizens' voting right. Therefore, there is a duty cast upon the 1st Respondent to be transparent and accountable to the public.
- 67) Unlike government servants, a Members of Parliament are elected by the peoples' vote. They are maintained by the tax payers' money and the public funds. Therefore, they should be accountable to the public. The Petitioner and also the public have a legitimate expectation that when they are casting the votes, the person to whom the votes are casted is a citizen of Sri Lanka and/or their votes are used to nominate a National List Member who is a citizen of Sri Lanka.
- 68) On that, I do not see any bar, difficulty or obstruction for the 1st Respondent to divulge her citizenship right to the court. However, the 1st Respondent had taken up objections and has not divulged her citizenship right.
- 69) In the event, the 1st Respondent had produced documents to support her citizenship right that the Petitioner could not have maintained this Application. However, the 1st Respondent's denial had strengthened the Petitioner's *prima facie* case against the 1st Respondent.
- 70) As I have stated before, the Counsel for the 1st Respondent relied on the argument that the statement made by the 1st Respondent to the Criminal Investigations Bureau cannot be used against her. It should be noted that the 1st Respondent made her statement to the Criminal Investigation Bureau on 31st October 2022, at the time she was holding the position of a State Minister. Moreover, the 1st Respondent never alleged that the statement was involuntary or made under duress.
- 71) Therefore, I am conscious of the fact that there was no duress, threat or influence when she was making the said statements to the Criminal Investigation Bureau.
- 72) On that, the narrow view is that the 1st Respondent's integrity, honesty, transparency and accountability are questionable as she had failed to produce any document or satisfy the court to counter the *prima facie* case put forward by the Petitioner against her citizenship right.
- 73) Beside these facts, President's Counsel Shavindra Fernando appeared for the 1st Respondent raised a preliminary objection that the Petitioner has failed to follow the Rule No.3.1(a) of the Court of Appeal Rules to tender original documents or duly certified documents as per the said Rules.

- 74) This matter was argued for the second time on 14th September 2023 before a Three Bench. The Counsels agreed to take up the preliminary objection and the main matter together.
- 75) I have already said in my above analysis, the preliminary objections raised by the 1st Respondent cannot be sustained as most of the original documents are in the custody of the 1st Respondent and the 3rd Respondent.
- 76) The 3rd Respondent in their objections had specified that the scanned copies of the documents prior to the year 2017 are not available with them. The 1st Respondent other than denying the Petitioner's position had failed to produce any documents or challenge the position taken by the Petitioner.

In the decided case *Nrisingha Murari Chakraborty & Ors vs State of West Bengal*¹¹ delivered by the Apex Court of India, it has specified the position of a passport as follows: -

"A passport is a document which, by its nature and purpose, is a political document for the benefit of its holder. It recognises him as a citizen of the country granting it and is in the nature of a request to the other country for his free passage there¹²...It is a tangible thing and is capable of ownership. There can therefore be no doubt that it is "property". It is property of the State so long as it is with the passport issuing authority and has not been issued to the person concerned and, after issue, it becomes the property of the person to whom it has been granted."¹³

When considering the facts pertaining to the aforesaid decision Justice Shingal had specified that a passport is a tangible thing and is capable of ownership. Once the said passport is issued by the authority, it becomes a property of the said person to identify him and recognize a person's citizenship. Thus, the original copies of the passport should be available with the 1st Respondent as the property belongs to her.

- 77) In the said circumstances, I do not consider the preliminary objection taken by the 1st Respondent as a valid preliminary objection.

¹¹ [1977] AIR 1174, [1977] SCR (3) 521.

¹² Ibid, para 3.

¹³ Ibid, para 6.

- 78) Therefore, as I have analyzed the facts in my second disputed question and the present question, my considered view is that the 1st Respondent is not entitled to be a Member of Parliament of the Democratic Socialist Republic of Sri Lanka as she has failed to produce documents to show that she is a citizen of Sri Lanka at the time of the Parliamentary Election or prior to appointing her as a National List Parliamentarian.

IV. If the above dispute (III) is answered in the affirmative, is the Petitioner entitled to get reliefs under Writ of Quo Warranto?

- 79) In the instant Application, the Petitioner had instituted these proceedings to obtain a Writ of Quo Warranto. **Dr. Sunil Cooray** in his **Principles of Administration Law in Sri Lanka – Volume II** book refers to the Writ of Quo Warranto as follows;

“An order in the nature of a writ of quo warranto is applied for to have it declared by Court that someone who is in de facto possession of a public office is not de jure entitled to it because his election or appointment to it is a nullity for some reason. In such an application the person whose election/appointment to a public office is being challenged as being invalid, is called upon to show by what valid authority (appointment/election) he claims to be legally entitled to that public office. Such an order is also available to have it declared by Court that someone who was earlier de jure entitled to a public office and who earlier exercised the powers of that office, has since become disentitled to such public office on account of some supervening circumstance”¹⁴

- 80) Further, referring to the legal literature written by **J.A.L. Cooray Constitutional Law and Administrative Law of Sri Lanka** refers to as follows;

“Under the law the writ of quo warranto may be granted by the Supreme Court to determine whether the holder of a public office is legally entitled to it.” In Sri Lanka in the absence of any procedure under the Local Authorities Elections Ordinance writ of quo warranto lies to question the election of a member of a local government authority who has acted in that office.” At page 365 the learned Author states as follows: “Even if the validity of an election cannot be questioned by a

¹⁴ S.F.A. Coorey, *Principles of Administrative Law in Sri Lanka – Vol II* (4th edn, 2020) 1056.

quo warranto, the writ is nevertheless available for the purpose of calling upon a person who is prima facie disqualified from holding a particular office to show upon what authority he claims to hold such office."¹⁵

81) These two literatures have specified and explained the circumstances on which a Writ of Quo Warranto can be obtained. In the event of notice issued to a party, when an application made under Writ of Quo Warranto and if there is *prima facia* evidence against him or her to disqualify him or her holding a particular office, such a person has to show the authority upon which he or she is holding such an office.

82) This position is further enhanced by the book **Writ of Remedies** written by **Justice BP Banerjee**.

*"The general rule is that the burden of proof is on the respondent. When the Court calls upon an individual to show his title to an office, he must show the continued existence of every qualification necessary to its enjoyment. He must set out his title specifically and show on the face of the answer that he has a valid title. People are not called on to show anything. The entire burden is on the defendant."*¹⁶

83) In the said circumstances, following the literatures and the principle of Writ of Quo Warranto, it is clear that the Petitioner is entitled to obtain reliefs under the Writ of Quo Warranto directing the 1st Respondent to prove her credentials to hold the office of a Member of Parliament of Sri Lanka and to be a State Minister.

84) In the case of *Dilan Perera V Rajitha Senarathne*¹⁷, Justice Yapa had observed as follows;

"It is to be observed that quo warranto is a remedy available to call upon a person to show by what authority he claims to hold such office. Therefore, the basic purpose of the writ is to determine whether the holder of a public office is legally entitled to that office. If a person is

¹⁵ Joseph A.L. Cooray, *Constitutional Law and Administrative Law of Sri Lanka (Ceylon)* (Hansa Publishers Limited, Sri Lanka, 1973) 364.

¹⁶ Justice B. P. Banerjee, *Writ Remedies* (8th edn, LexisNexis, India 2023) 286.

¹⁷ [2000] 2 SLR 79 at pg 100.

disqualified by law to hold statutory office the writ is available to oust him... In mandamus the petitioner must show that he is a person aggrieved but this requirement is not necessary in quo warranto, since this writ seeks to prevent an occupier or a usurper of an office of public nature from continuing in that position. Therefore, in these proceedings it would appear that any person can challenge the validity of an appointment to a public office irrespective of whether any fundamental or other legal right of that person is infringed or not.”

- 85) In the case of ***Geetha Kumarasinghe and Others V New Buwaneka Lalith and Others***¹⁸, it is held by the Supreme Court;

“What is the day on which a candidate becomes elected to be a Member of Parliament? It is the day of the Parliamentary Election. What is the day on which a candidate becomes qualified to sit and vote in Parliament? It is the day of taking oaths as a Member of Parliament and thereafter. When I consider the Article 91(1)(d)(xiii) of the Constitution, I hold that if a candidate in a Parliamentary Election is a citizen of Sri Lanka and any other country

1. On the day of the Parliamentary Election or

2. On the day of taking oaths as a Member of Parliament

he cannot be considered as a Member of Parliament and that the office of such person as a Member of Parliament is a nullity. I further hold that after taking oaths as a Member of Parliament, if he becomes a citizen of any other country or continues to be a citizen of any other country, he too cannot be considered as a Member of Parliament and that the office of such person as a Member of Parliament is a nullity.”

- 86) The aforesaid two Apex Court decisions have clearly decided the principle of Writ of Quo Warranto and in the event of proving a *prima facie* case against a party who is disqualified to hold such office, that the Writ of Quo Warranto is available to oust him or her.

¹⁸ SC/APPEAL/99/2017, SC Minutes of 02.11.2017.

- 87) I draw my attention to Justice Sisira De Abrew's decision in the ***Geetha Kumarasinghe case***. In the said decision page number 9 refers to the Evidence Ordinance¹⁹. I reproduce the said Sections as follows;

Section 101 of the Evidence Ordinance reads as follows:

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

Section 103 of the Evidence Ordinance reads as follows:

"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is proved by any law that the proof of that fact shall lie on any particular person"

Illustration to this section is as follows: "B wishes the court to believe that, at the time in question, he was elsewhere. He must prove it."

Section 106 of the Evidence Ordinance reads as follows:

"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

Illustration to this section reads as follows:

"A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

- 88) When observing the said Sections, on the face of it, the Sections are similar to the principle of Writ of Quo Warranto and the said provisions have reiterated on whom the burden of proof lies in the event of proving existing facts.
- 89) On that, Justice Abrew in his judgment²⁰, on the pages 10 and 11 had emphasized that Geetha Kumarsinghe had failed to produce the necessary documents and evidence to prove her citizenship rights of Sri Lanka. In the said circumstances, the instant case is a similar case to the aforesaid Geetha Kumarasinghe case and in that His Lordship Justice Sisira De Abrew had accepted that the Court of Appeal has the right to issue a

¹⁹ Evidence Ordinance, Section 101, 103 and 106.

²⁰ *Geetha Kumarasinghe and Others V NWE Buwaneka Lalith and Others*- SC/APPEAL/99/2017, SC Minutes of 02.11.2017.

Writ of Quo Warranto to disqualify a Member of Parliament holding the office without the citizenship right of Sri Lanka.

- 90) In spite of the facts, the Counsel for the Petitioner brought to the notice of the Court the Citizenship Act of Sri Lanka. Section 2 of the Citizenship Act provides for a person to obtain the status of citizenship of Sri Lanka. The said Section refers to as follows;

“Section 2(2) – A person shall be or become entitled to the status of a citizen of Sri Lanka in one of the following ways only: -

(a) By right of descent as provided by this Act;

(b) By virtue of registration as provided by this Act or by any other Act authorizing the grant of such status by registration in any special case of a specified description.”

- 91) Further, Section 5(1)²¹ refers to by descent a citizenship right can be obtained if the father is a citizen of Sri Lanka.
- 92) Furthermore, the Counsel for the Petitioner drew the attention to Sections 8(1)(a)(b), 19, 20(2)(c), 20(5)(6), and Section 2(2)(3)(5) of the Citizenship Act²². Referring to the above provisions, the Counsel for the Petitioner argued that as the mother of the 1st Respondent is a British Citizen, the 1st Respondent had to renounce her rights to be a British Citizen to become a citizen of Sri Lanka.
- 93) The Counsel appearing for the 1st Respondent had not replied sufficiently for the said argument raised by the Counsel for the Petitioner. However, in view of considering all these materials, the 1st Respondent had failed to show that she has the authority to claim to be a Member of Parliament as being a citizen of Sri Lanka.
- 94) The 3rd Respondent in their objections in paragraph 17(xi) had admitted at no stage a citizenship certificate had been issued to the 1st Respondent. The Senior Deputy Solicitor General appearing for the 3rd Respondent argued that the citizenship certificate is only issued when there is a need arisen on the citizenship right of an individual. In this case, investigations had commenced to consider an issue involving the citizenship of the 1st Respondent. Until the completion of the said investigation and the Magistrate’s Court proceedings in Case No. B48037/01/2021 of the Chief Magistrate’s

²¹ Citizenship Act, No. 18 of 1948.

²² Citizenship (Amendment) Act, No. 45 of 1987.

Court of Colombo, one cannot decide as to whether the 1st Respondent has committed an offence in connection with her citizenship rights.

- 95) As I have emphasized in the earlier disputes, the 1st Respondent being a Member of Parliament of Sri Lanka should be transparent and accountable to the public.
- 96) Therefore, at least, the 1st Respondent should have a relevant document or a citizenship certificate to prove that she is a citizen of Sri Lanka as her rights had been challenged by the Petitioner and the 4th Respondent in this case.

V. If so, is the duty cast upon the 1st Respondent to prove her legal rights to hold the office as a Member of Parliament?

- 97) The Counsel for the 1st Respondent argued that as per the Article 140, the laws of the other jurisdictions cannot be considered to decide these matters. Therefore, the Petitioner is not entitled to proceed with this Application.²³
- 98) The aforesaid objection taken by the Counsel for the 1st Respondent is already decided by the Apex Court. In the cases of *Goonasighe V de Kretser*²⁴, *Nakkuda Ali V Jayaratne*²⁵, and *M.D. Chandrasena and Two Others V S. P. de Silva (Director of Education)*²⁶, the court has interpreted the term ‘According to Law’ is to mean the relevant rules of English Common Law.
- 99) The above decisions were based on the premise that the law relating to prerogative Writs originated and evolved in the United Kingdom. Our courts have followed this in a long line of authorities.
- 100) Therefore, the argument raised by the Counsel for the 1st Respondent that we should restrict our arguments to Article 140 cannot be accepted.
- 101) As I have stated in the above disputes, other than challenging that the 1st Respondent’s local passport documents have not been maintained by the Immigration and Emigration Department, that she is innocent until the Magistrate’s Court Case No. B48037/01/2012 is proven, that she is innocent and the statements made to the CID cannot be used against her are the main objections raised by the 1st Respondent.

²³ Constitution of Sri Lanka, Article 140.

²⁴ [1944] 46 NLR 107.

²⁵ [1950] 51 NLR 457.

²⁶ [1961] 63 NLR 143.

- 102) I too agree relating to obtaining the 1st Respondent's passport, producing birth certificate should be investigated and decided by the aforesaid Magistrate's Court proceedings.
- 103) However, this Application is a Writ of Quo Warranto. As following the principles of the Writ of Quo Warranto, this Court has issued notice to the 1st Respondent.
- 104) The Petitioner had produced sufficient material to show that the 1st Respondent has not obtained Sri Lankan Citizenship and/or has renounced her British Citizenship.
- 105) It is a manifest ground, in a Writ of Quo Warranto for the 1st Respondent to counter and satisfy the Court that she is a citizen of Sri Lanka. Further, being a Parliamentarian, the 1st Respondent should be transparent and should have shown her genuineness with regard to her Sri Lankan Citizenship.
- 106) As against the documents and the material produced by the Petitioner, the 1st Respondent had failed to prove that she is a citizen of Sri Lanka.
- 107) The 1st Respondent has an obligatory right towards the Petitioner and the public as she is holding a public office maintained by the tax payers' money and funds of the public.
- 108) Therefore, I emphasis being a Member of Parliament, the 1st Respondent should be an example and transparent and accountable to the public.

When referring to case laws, it is clear that the aforesaid ground has been further substantiated by British judgements on accountability and the proper administration of justice.

A classic example is provided by the case of ***R v Festus Onasanya and Fiona Onasanya***.²⁷ Fiona Onasanya ('Onasanya') was both a solicitor by profession and a Labour Member of Parliament. Yet, at the Central Criminal Court in London, she was convicted by a jury of perverting the course of public justice by providing false information to the authorities about the identity of a car that had been driven beyond the speed limit. Addressing Onasanya in his Sentencing Remarks, dated 29 January 2019, Mr. Justice Stuart-Smith explained:

"The fact remains that, both as a solicitor and as a Member of Parliament you [i.e. Onasanya] are fully aware of the importance of upholding the proper administration of justice. You have not simply let

²⁷ *R V Festus Onasanya and Fiona Onasanya* (Central Criminal Court, London and Wales, 29 January 2019) (Justice Stuart-Smith)

yourself down; you have let down those who look to you for inspiration, your party, your profession and Parliament.”

“The impact of your conviction has been disastrous for you. You have been expelled from the Labour Party and it seems inevitable that you will be struck off as a solicitor. ... I make plain that I will not treat you more severely because of your position as an MP and former solicitor. That said, as Ms Agnew accepted on your behalf, there cannot be one law for those in positions of power, privilege and responsibility and another for those who are not. ... You had a choice on 2 November 2017 whether to tell the truth or to attempt to pervert the course of public justice. You made the wrong choice, with disastrous consequences.”

In the said case Onasanya had lost her seat in the House of Commons. That arose under the Recall procedure established by the Recall of MPs Act 2015, which is itself a mechanism of Parliamentary accountability. Further, this is a fit and proper case to consider accountability and transparency of a Parliamentarian.

- 109) Therefore, I am of the view the duty of the 1st Respondent is to prove her citizenship right in the instant action rather than challenging the Petitioner’s position.

VI. If not, is the Petitioner entitled for the reliefs claimed in the prayers of the Petition dated 14th November 2022?

- 110) As I have related and analyzed the facts in dispute Nos. I, II, III and IV, the Petitioner is entitled to get the reliefs prayed for in the prayer of the Petition dated 14th November 2022 as the 1st Respondent had failed to support or prove that she is entitled to hold her office as a Member of Parliament.
- 111) The Petitioner has proven a *prima facie* case against the 1st Respondent as decided in the case of *Geetha Kumarasinghe and Others V Buwaneka Lalitha, Galle and Others*.

CONCLUSION

- 112) In view of the aforementioned facts and in considering the documents, Written Submissions and arguments, I cannot agree with the findings of the President of the Court of Appeal.

- 113) On that, I am deciding this case considering the facts, documents and the arguments and the Written Submissions in favour of the Petitioner and I grant Writ of Quo Warranto prayed for in the prayer 'c' and 'd' of the Petition dated 14th November 2022.
- 114) I fix tax cost against the 1st Respondent to be payable to the Petitioner.

Judge of the Court of Appeal