

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

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

**S.C.F.R. No. 342/2009**

1. H. Dilanka Wijesekera  
100, Moronthuduwa Road,  
Wadduwa.
2. Sanjeewa Jayasinghe  
102/E, St. Ritas Road,  
Mount Lavinia.
3. G. Dinesh Sanjeeva  
07, Kidagamulla,  
Gampaha.
4. Tuan Shamrock  
85/7, de Mel Road,  
Lakshapathiya,  
Moratuwa.
5. R. M. M. Sathiya Ranathunga  
80, Palladeniya  
Kegalle.
6. Tuan Kishor Jehan  
78/3, Darga Mawatha,  
Chillaw.

7. Eranga Swarnathilake  
16, Kalugala Road,  
Katugastota,  
Kandy
8. Safeer Jhan  
53/11, Dharmapala Place,  
Rajagiriya.
9. S. Mark Wijesinghe  
245, Dutugamunu Mawatha,  
Watapuluwa,  
Kandy.
10. K.A. Don Sajith Saranga  
44/15, Edmonton Road,  
Kirilapone
11. W. M. Prasad Chaturanga  
60/20B, Mawilmada,  
Kandy.
12. T. Mohamed Fazil Marjja  
68/15/1, Polwatte,  
Gohagoda, Katugastota,  
Kandy.
13. Gayan Weeraratne  
85, Mapanawathura  
Kandy.
14. Mohamed Sheriff  
68/15, Polwatte,

Gohagoda Road,  
Katugastota,  
Kandy

15. H. Rathika I. Hettiarachchi  
70/A3, Riverside Garden,  
Gohagoda Road,  
Katugastota road,  
Kandy

**PETITIONERS**

**-Vs-**

1. Gamini Kulawansa Lokuge  
Minister of Sports and  
Public Recreation,  
Ministry of Sports and Public  
Recreation,  
Independence Square,  
Colombo 7.
2. Indrajith Maithree De Zoysa  
Gunasekara  
Chairman-Interim Committee  
of the Sri Lanka Rugby  
Football Union,  
7C, Reid Avenue,  
Colombo 07.
3. Kiran Attapattu  
Secretary and Treasurer-  
Interim Committee Sri Lanka  
Rugby Football Union,

7C, Reid Avenue,  
Colombo 07.

4. Indra De Silva  
Chairman of the Selection  
Committee appointed by the  
1<sup>st</sup> Respondent in terms of  
The Control of Participation  
in Sports Representing Sri  
Lanka Regulations,  
40/1A, Ekwatte Road,  
Mirihana, Nugegoda.
  
5. B.L.H. Perera  
Member of the Selection  
Selection Committee  
appointed by the  
1<sup>st</sup> Respondent in terms of  
The Control of Participation  
In Sports Representing Sri  
Lanka Regulations,  
486/3, Makubura,  
Pannipitya.
  
6. Hemasiri Fernando  
Member of the Selection  
Committee appointed by the  
1<sup>st</sup> Respondent in terms of  
The Control of Participation  
in Sports Representing Sri  
Lanka Regulations,  
11A, Saranankara Road,  
Colombo 06.

7. Commander H. U. Silva  
Member of the Selection  
Committee appointed by the  
1<sup>st</sup> Respondent in terms of  
The Control of Participation  
In Sports Representing Sri  
Lanka Regulations,  
87/5, Ebert Lane,  
Kaldemulla
  
8. Rohan Abeykoon  
Former Chairman,  
Selection Committee,  
Sri Lanka Rugby Football  
Union, 7C, Reid Avenue,  
Colombo 7.
  
9. Nazeem Mohomed  
Former Member,  
Selection Committee,  
Sri Lanka Rugby Football  
Union, 7C, Reid Avenue,  
Colombo 7.
  
10. M.H. Marso  
Member,  
Selection Committee,  
Sri Lanka Rugby Football  
Union, 7C, Reid Avenue,  
Colombo 7.
  
11. Chaminda Rupasinghe

**S.C. (F/R) No. 342/2009**

Member, Selection Committee,  
Sri Lanka Rugby Football  
Union, 7C, Reid Avenue,  
Colombo 7.

12. Rohantha Peiris  
Member, Selection Committee,  
Sri Lanka Rugby Football  
Union, 7C, Reid Avenue,  
Colombo 7.

13. Ajith Abeyratne  
Member, Selection Committee,  
Sri Lanka Rugby Football  
Union, 7C, Reid Avenue,  
Colombo 7.

14. Marco de Silva  
Member, Selection Committee,  
Sri Lanka Rugby Football  
Union, 7C, Reid Avenue,  
Colombo 7.

15. Viraj Prassanna  
Member, Selection Committee,  
Sri Lanka Rugby Football  
Union, 7C, Reid Avenue,  
Colombo 7.

16. Tikiri Marambe  
Member, Selection Committee,  
Sri Lanka Rugby Football  
Union, 7C, Reid Avenue,  
Colombo 7.

17. Daya Jayasundera  
Member, Selection Committee,  
Sri Lanka Rugby Football  
Union, 7C, Reid Avenue,  
Colombo 7.
18. Pavithra Fernando  
11A, Saranankara Road,  
Pamankada.
19. Rizly Illiyas  
Acting Secretary,  
Sri Lanka Rugby  
Football Union,  
Union, 7C, Reid Avenue,  
Colombo 7.
20. Lasitha Gunaratne  
Acting Chief Executive Officer  
Sri Lanka Rugby  
Football Union,  
Union, 7C, Reid Avenue,  
Colombo 7.
21. Hon. Attorney General  
Attorney General's  
Department, Colombo 12

**RESPONDENTS**

**BEFORE** : TILAKAWARDANE.J  
IMAM.J &  
SURESH CHANDRA.J

**COUNSEL** : Upul Jayasuriya with Manoj Bandara instructed  
by Aparajitha Ariyadasa for the 1<sup>st</sup> Petitioner.

Harsha Fernando, S.S.C., for the 1<sup>st</sup> and 21<sup>st</sup>  
Respondents.

Palitha Kumarasinghe, P.C., with Chinthaka  
Mendis instructed by K.P. Law Associates for the  
2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

Dilshan Jayasuriya instructed by Upula  
Fernando for the 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Respondents.  
Upula Fernando for the 6<sup>th</sup> Respondent.

Shanaka Amarasinghe instructed by  
Samanmalee Widyaratne for the 18<sup>th</sup>  
Respondent.

Kuvera de Zoysa with Asiri Dissanayake  
instructed by M.J.S. Fonseka for the 20<sup>th</sup>  
Respondent.

8<sup>th</sup> to 17<sup>th</sup> and 19<sup>th</sup> Respondents are absent and  
unrepresented.

**ARGUED ON** : 15.11.2011  
(On Preliminary Objections)



WRITTEN SUBMISSIONS OF THE  
PETITIONERS TENDERED ON: 26.01.2011.

WRITTEN SUBMISSIONS OF THE  
1<sup>ST</sup> & 21<sup>ST</sup> RESPONDENTS  
TENDERED ON : 07.01.2011.

WRITTEN SUBMISSIONS OF THE  
2<sup>ND</sup> & 3<sup>RD</sup> RESPONDENTS  
TENDERED ON : 13.12.2010.

WRITTEN SUBMISSIONS OF THE  
4<sup>TH</sup>, 5<sup>TH</sup>, 6<sup>TH</sup> & 7<sup>TH</sup> RESPONDENTS  
TENDERED ON : 03.01.2011.

WRITTEN SUBMISSIONS OF THE  
18<sup>TH</sup> RESPONDENT  
TENDERED ON : 03.01.2011.

DECIDED ON : 10.06.2011

**TILAKAWARDANE.J**

The Petitioner, together with 14 others (hereinafter referred to as the "Petitioner") instituted this Fundamental Rights Application by Application dated 29<sup>th</sup> April 2009 seeking several avenues of relief. Subsequently the 14 Petitioners withdrew their Application and the case proceeds on the Application of the Petitioner. When this matter was taken up for argument on 15<sup>th</sup> November 2010, the Counsel for the Respondents assailed the Application on the following Preliminary Objections:-

- (a) The instant Application is out of time and is therefore time barred;

- (b) The Petitioner has no *locus standi* to institute and/or to continue the instant Application; and
- (c) The Petitioner has failed to demonstrate an infringement of his fundamental rights guaranteed under Section 12 (1) and/or 12 (2) and/or 14 (1)(g);

In light of the aforementioned grounds, the Respondents submitted that the Application should be dismissed *in limine*. This Court, having heard all the parties to this matter on the above preliminary objections, thereafter gave permission for parties to tender limited written submissions on the said preliminary objections. Having received and reviewed such submissions, we have examined and analyzed the merits of the said objections.

The initial matter for this Court's consideration is whether the Petitioner's Application is time barred in terms of Article 126(2) of the Constitution. Article 126(2) of the Constitution provides that:

*"Where a person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney at law on his behalf, within one month thereof, in accordance with such rules of Court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement."*

The Respondents assert that the nearly 3 month gap between the issuance of the Order of the 1<sup>st</sup> Respondent contained in the Gazette notification No.1586/27 dated 30<sup>th</sup> January 2009 and marked "E" with the Petition and the filing of the Application on 29<sup>th</sup> April 2009, precludes

this Court's review of the Application. The Respondents refer to the decision in Gamaethige v. Siriwardena and Other (1988) I Sri.L.R. 384 to emphasize the fact that this Court has consistently held compliance with the one month time period stipulated in Article 126(2) to be mandatory. In Gamaethige, His Lordship Fernando, J. stated that "the time limit of one month prescribed by Article 126(2) has thus been consistently treated as mandatory..." and that "...the remedy under Article 126 must be availed of at the earliest opportunity, within the prescribed time, and if not so availed of, the remedy ceases to be available." (at pages 397 and 401, respectively).

While this Court accepts that the entirety of the substantive relief prayed for in Prayer (c) of the Application relates to the Order, we do not agree with the Respondents that the dates of these two documents (and especially the date of the Order) are alone appropriate in determining compliance with the timing requirement in Article 126(2). Though the Petitioner has indeed filed an Application more than one month after the issuance of the Order, to reject the Application on this basis alone would be to ignore the continuing nature of the violation of the Petitioner's fundamental rights at issue in this case. The decision in Sugathapala Mendis and another v. Chandrika Bandaranaike Kumarathunga and others (S.C.F.R. 352/2007) articulates the nature of the injustice we seek to avoid here, noting that the nature of a large-scale development project was one that, by definition, continued over time, and therefore, the commencement of the project could not fairly be used as the point from which time began. In this case too, the petitioner has alleged that by the suspension of the Petitioner from the team of the Sri Lanka Rugby Football Union, merely on the basis of his refusal to participate in the Asian Rugby Football Union Five Nations Division – Rugby Tournament which was to be held in Dubai, which he alleged was legitimately refused by him on the basis that his Captaincy was wrongly and unfairly overlooked and a partisan appointment to Captaincy had been purportedly made.

As in Sugathapala, the instant case involves the violation of the Petitioners' fundamental rights in the context of a situation, which by definition, continues this violation. Indeed, in a matter where the violation is of a serious nature, affecting material rights which are pertinent and critical to the Petitioner, where mala fides, bias or caprice can be established and if it is a continuing violation, this Court will not dismiss the case *in limine*, without at least considering the grievance of the Petitioners especially in a matter that affects youth and young persons. Therefore, this Court refuses to dismiss, in these particular circumstances, this case *in limine* based on non-compliance with Article 126(2).

The Respondents also have averred that the Petitioners have no standing to maintain this Application. More specifically, the Respondents aver that (i) the Petitioner is not a member of the Sri Lanka Football Rugby Union, (ii) the Petitioner has not pleaded to ever being a member in his Petition and therefore, (iii) the Order marked "P6" dissolving the Sri Lanka Rugby Football Union and appointing an Interim-Committee to ensure the smooth functioning of the activities of the said Union cannot be found to be discriminatory of the Petitioner and/or violate his fundamental right to equality, equal protection of the law and freedom to engage in any lawful occupation, profession, trade, business or enterprise.

To substantiate this position, the Respondents refer this Court to the case of Narendrakumar v. Ziyard and Others (2000) 1 SLR 251, where His Lordship S. N. Silva CJ held that;

*"[a]lthough these rights and freedoms are common to everybody or every citizen, as noted above, the right to invoke the Constitutional remedy in Article 126(1) upon an infringement of such a right is individual to the person who is*

*aggrieved by such infringement. This is the necessary inference of the words contained in Article 17 and 126(2) of the Constitution...*" (At page 261)

While this Court considers the Respondents' suggestion and of His Lordship's reasoned judgment, this Court notes that the decision of whether a petitioner lacks *locus standi* is informed by a body of case law that exceeds a single case. Cases decided relatively contemporaneously with the Narendrakumar case broaden the scope of standing with respect to Fundamental Rights cases in a way, which we believe, proves relevant to the scenario at hand. In the case of Bulankulama v. Secretary, Ministry of Industrial Development [2000] 3 Sri.L.R. 243, the Supreme Court observed that the fact that the violation for which redress is sought is one suffered upon a broad swath of the citizenry, and affects the entire appointments to the different sporting bodies and decisions taken by those bodies, which the ordinary citizenry expects to be purely on merit, and on decisions that are objective, unbiased, impartial and based on the fundamental precept of the equality of all persons in Sri Lanka does not militate a rejection of standing. It was further held by Justice Amerasinghe that;

*"On the question of standing, in my view, the petitioners, as individual citizens, have a Constitutional right given by Article 17 read with read with Article 12, 14 and Article 126 to be before this Court. They are not disqualified because it so happens that their rights are linked to the collective rights of the citizenry of Sri Lanka-rights they share with the people of Sri Lanka. Moreover, in the circumstances of the instant case, such collective rights provide the context in which the alleged infringement or imminent infringement of the petitioners Fundamental Rights ought to be considered. It is in that connection that the confident expectation (trust) that the Executive will act in accordance with the law and*

*accountability, in the best interest of the people in Sri Lanka, including the petitioners, and future generations of Sri Lankans, become relevant.”*

In Jayantha Adikari Egodawele v. Dayananda Dissanayake, Commissioner of Elections, FRD (2) 292 the Supreme Court further observed:

*“The citizen’s right to vote includes the right to freely choose his representatives through a genuine election which guarantees the free expression of the will of the electors: not just his own. Therefore, not only is a citizen entitled himself to vote at a free, equal and secret poll, but he also has the right to a genuine election guaranteeing the free expression of the will of the entire electorate to which he belong... The freedom of expression, of like-minded voters, when exercised through the electoral process is a collective one, although they may not be members of any group or association. This is by no means unique. A scrutiny of Article 14 reveals that many Fundamental Rights have both an individual and a collective aspect.*

In Kottabadu Durage Sriyani Silva v. Chanaka Iddamalgoda 21 SC (FR) 471/2000 standing was given under Article 126 to the wife of the deceased. In its first order dealing with two preliminary objections, this court stated that every right must have a remedy and that it would be absurd to contend that a right ceased and became ineffective due to death, as was alleged by the Respondent in that case. In Kottabadu this Court further observed that a literal interpretation of the Constitution must be avoided if it were to produce such an ‘absurd result’. Accordingly, in its final order in the same case this Court stated that the right to life was implicitly recognized in the Constitution, especially under Article 13(4). Here this Court was of the opinion that where an infringement of the right to life was concerned the Court must interpret

the word 'person' contained in Article 126(2) broadly, so as to include even an heir or dependent of the person who had been put to death.

Accordingly, the opinion of this Court is that, in light of the aforesaid developments as regards to standing or *locus standi* in fundamental rights Applications, the interest of justice mandates this Court's focus on the potential injustice canvassed by the applicant, and not on the interest of the applicant and, therefore, in light of the foregoing case law this Court finds that so long as the applicant of a fundamental rights Application comes before this Court in good faith, on a matter or matters affecting a broad spectrum of people, and where special and or exceptional circumstances exist, such as where the matter impacts , as is alleged in this case -that it is a matter of paramount importance to the youth who are involved in sports in this country ( especially where the Court is the upper guardian of the children and young persons) - standing is to be allowed. Applying this principle to the present case, this Court finds that the substantive injustice alleged to have been suffered upon the Petitioners of this Application warrants this Court's review of it. *Locus standi* exists.

The Petitioners in their fundamental rights Application claim that the Order marked "P6" dissolving the Sri Lanka Rugby Federal Union and failing to appoint the Petitioner to the post of Captain of the Sri Lankan team that toured Dubai for Asian Five Nations Rugby Tournament is an infringement of the 1<sup>st</sup> Petitioner's Fundamental Right guaranteed under 14 (1) (g) of the Constitution, the "*freedom to engage by himself or in association with others in any lawful occupation, profession, trade, or enterprise.*" The Respondents, emphatically state that the Petitioners have failed to establish before this Court that the aforesaid Fundamental Right of the Petitioners have, in fact, been violated.

In regards to the case law preferred above , when taken with the above mentioned rules give the Court some latitude to determine

inquiry to be in the best interest of justice, especially in matter like this which affects the future of sports which involves, its discipline and the aspirations of young persons, this Court holds that the Petitioners have provided in its pleadings matters that need to be at least considered relating to whether Petitioners are entitled to relief from violation of their the Fundamental Rights guaranteed by Articles 12(1), 12(2) and 14(1)(g). Therefore this Court holds that the Petitioner should be given the opportunity to be heard before this Court on whether there has been a violation of his Fundamental Rights guaranteed by Articles 12(1), 12(2) and 14(1)(g) of the Constitution.

Fundamental Rights Applications must be seriously considered before they are brushed off *in limine* without affording the Petitioners the opportunity to unfold the narrative of events. This is particularly so where the claimed rights of parties have purportedly been manipulated and they have not been afforded the opportunity to be considered equally, objectively and impartially in the decision making process of an organization. The common aspirations of all beings to be enshrouded in the cloak of their guaranteed right to self-dignity and respect cannot be shorn off by capricious or arbitrary and subjective decision making. Such decision-making cannot infract upon the legitimate expectations of a community of people to be considered on the basic premise that every being has a right to the paradigm of being considered equally, especially before the law, and not be subjected to discrimination, bias, unfair decision making by the executive. The rule of law is and must after all be characterized with the principles of supremacy of the law, the quality of the law, accountability to the law, legal certainty, procedure and legal transparency, equal and open access justice to all, irrespective of gender, race, religion, class, creed or other status.

In light of the aforesaid, preliminary objections raised by the Respondents on 15th November 2010 are hereby dismissed. Case is to be fixed for support.



JUDGE OF THE SUPREME COURT

IMAM.J

I agree.

JUDGE OF THE SUPREME COURT

SURESH CHANDRA.J

I agree.

JUDGE OF THE SUPREME COURT

MK