

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

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

Ceylon Electricity Board Accountants' Association,
No. 50, Sir Chiththampalam A. Gardiner Mawatha,
Colombo 02.

Petitioner

SC FR No. 18/2015

Vs.

1. Hon Patali Champika Ranawaka,
Minister of Power and Energy,
Ministry of Power and Energy,
No. 80, Sir Ernest De Silva Mawatha,
Colombo 07.
- 1a. Hon. Ranjith Siyambalapitiya,
Minister of Power and Renewable Energy,
Ministry of Power and Renewable Energy,
No. 80, Sir Ernest De Silva Mawatha,
Colombo 07.
2. Dr. B.M.S. Batagoda,
Secretary, Ministry of Power and Energy,
No. 80, Sir Ernest De Silva Mawatha,
Colombo 07.
3. Ceylon Electricity Board,
No. 50, Sir Chiththampalam A. Gardiner
Mawatha, Colombo 02.
4. M.C. Wickremasekara,
General Manager, Ceylon Electricity Board,
No. 50, Sir Chiththampalam A. Gardiner
Mawatha, Colombo 02.
5. W.D.A.S. Wijayapala,
Chairman, Ceylon Electricity Board,
No. 50, Sir Chiththampalam A. Gardiner
Mawatha, Colombo 02.
6. B.N.I.F.A. Wickramasuriya,
Vice Chairman,
Ceylon Electricity Board,
No. 50, Sir Chiththampalam A. Gardiner
Mawatha,
Colombo 02.

- 6a. W.A. Gamini Wanasekara,
Vice Chairman,
Ceylon Electricity Board,
No. 50,
Sir Chiththampalam A. Gardiner Mawatha,
Colombo 02.
7. N.K.G. Gunatilake,
Working Director,
Ceylon Electricity Board,
No. 50, Sir Chiththampalam A. Gardiner
Mawatha, Colombo 02
- 7a. W.R.G. Sanath Bandara
Working Director,
Ceylon Electricity Board,
No. 50, Sir Chiththampalam A. Gardiner
Mawatha, Colombo 02
8. Jeevani Kariyawasam,
Member,
Ceylon Electricity Board,
No. 50,
Sir Chiththampalam A. Gardiner Mawatha,
Colombo 02.
9. S.S. Miyanwala,
Member,
Ceylon Electricity Board,
No. 50,
Sir Chiththampalam A. Gardiner Mawatha,
Colombo 02.
- 9a. T.N.K.B. Tennekoon,
Member, Ceylon Electricity Board,
No. 50, Sir Chiththampalam A. Gardiner
Mawatha, Colombo 02.
10. J. Dadallage,
Member,
Ceylon Electricity Board,
No. 50, Sir Chiththampalam A. Gardiner
Mawatha, Colombo 02.
- 10a. S.D.A.B. Boralessa,
Member, Ceylon Electricity Board,
No. 50, Sir Chiththampalam A. Gardiner
Mawatha, Colombo 02.

11. R. Semasinghe,
Member, Ceylon Electricity Board,
No. 50, Sir Chiththampalam A. Gardiner
Mawatha, Colombo 02.
12. Hon. Attorney General,
Attorney General's Department
Hulftsdorp, Colombo 12.
13. Ceylon Electricity Board Engineers' Union,
Projects and Heavy Maintenance Branch-DD04,
Ceylon Electricity Board,
Sir Devananda Mawatha,
Piliyandala.
14. Neville Piyadagama,
Chairman,
National Pay Commission,
No. 1/116, BMICH,
Buddaloka Mawatha,
Colombo 7.
15. B. Wijayarathna, Secretary, National Pay
Commission, No. 1/116, BMICH,
Buddaloka Mawatha, Colombo 7.

Respondents

BEFORE : K. Sripavan, C.J.
P. Dep, P.C., J.
Upaly Abeyrathne, J.

COUNSEL Romesh de Silva, P.C. with Shanka Cooray for the
Petitioner.

Nerin Pulle, Deputy Solicitor General, for the 1st – 12th
Respondents.

Faisz Musthapha, P.C. with Thushani Machado
instructed by H. Chandrakumar de Silva for the 13th
Respondent.

J.C. Weliamuna with Shantha Jayawardane for the
Intervenient Petitioner.

ARGUED ON : 11.03.2016

DECIDED ON : 03.05.2016

K. SRIPAVAN, C.J.,

When this application was taken up, the learned Deputy Solicitor General and the learned President's Counsel for the 13th Respondent raised a preliminary objection to the maintainability of the application on the ground that the Petitioner being a Trade Union has no locus standi to institute an application in terms of Article 126 of the Constitution. Court therefore directed the parties to file their written submissions and took up the matter for hearing on 11.03.16. However, the Petitioner filed its written submissions on 01.03.16 and the Respondents written submissions were filed on 24.02.16, well before the date of hearing.

On 11.03.16, learned Deputy Solicitor General informed that he would be relying on the determination made by this Court in S.C. (S.D.) No.19/2016 dated 23.02.16 and moved to file a copy of the said determination with notice to the Petitioner and the other Respondents. Mr. Romesh de Silva, P.C. moved Court to grant him one week's time to file further written submissions, if any, after considering the determination in S.C. (S.D.) No. 19/2016. Mr. Faisz Musthapha, P.C. informed that he would not be filing any further written submissions and that he too would be relying on the determination made in S.C. (S.D.) No. 19/2016.

Article 126(2) of the Constitution reads thus:-

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

Learned Deputy Solicitor General sought to argue that Articles 17 and 126(2) make no provision for a broad definition of the word "person" to include an unincorporated body or persons. Thus, the remedy provided for in Article 126(2) is a personal remedy, exercisable

by the person whose fundamental rights are allegedly violated through **“himself or by an Attorney-at-Law on his behalf”** (emphasis added)

Mr. Faisz Musthapha P.C. too made his submissions on the strict interpretation of Article 126(2) and relied on the decision of *Somawathie Vs. Weerasinghe* (1990) 2 S.L.R. 121, where Amerasinghe, J. at page 124 observed that *“Article 126 confers a recognized position only upon the person whose fundamental rights are alleged to have been violated and upon an Attorney-at-Law acting on behalf such person”* and added that *“no other person has the right to apply to the Supreme Court for relief or redress in respect of the alleged infringement of fundamental rights.”* Counsel further submitted that a liberal approach relating to locus standi was adopted in *Sriyani Silva Vs. Iddamalgoda* (2003) 1 S.L.R. 14, where Bandaranayake, J. held that a widow had locus standi to institute proceedings under Article 126 where the Petitioner’s husband had died due to injuries sustained as a result of being tortured by the respondents. At page 21, Bandaranayaka J. stated thus:--

*“Hence, when there is a **casual link between the death of a person and the process which constitutes the infringement of such person’s fundamental rights, any one having a legitimate interest could prosecute that right** in a proceeding instituted in terms of Article 126(2) of the Constitution. There would be no objection in limine to the wife of the deceased instituting proceedings in the circumstances of this case.”*
(emphasis added)

I would like to mention that in *Sriyani Silva’s case* (supra) Edussuriya J. while dissenting with the majority view, observed that there was nothing in Article 17 read with Article 126(2) which even remotely suggests that a widow had such a right or that such right devolves on a widow or heirs of a person whose fundamental rights have been infringed. Accordingly, Edussuriya, J. went on to hold that it was preposterous to hold that the legislature intended that the right to apply for redress should pass to the heirs of a deceased whose fundamental rights have been infringed. However, the majority decision was to allow the wife of the deceased who was a “person” within the meaning of Article 126 to continue with the fundamental rights application.

Mr. Romesh de Silva, P.C. strenuously contended that the Petitioner union is *“an association*

or a combination of workmen” and that the fundamental rights of the workmen, namely, the Accountants have been violated. Counsel drew the attention of Court to Section 28 and Section 30 of the Trade Unions Ordinance. For purposes of clarity, I reproduce below the said Sections.

Section 28:

“Every trade union shall be liable on any contract entered into by it or by an agent acting on its behalf, provided that a trade union shall not be so liable on any contract which is void or unenforceable at law”.

Section 30:

“A trade union may sue and be sued and be prosecuted under its registered name.”

Counsel thus argued that it is ludicrous to state that a trade union cannot initiate proceedings under Article 126(2), when a trade union can either be a plaintiff or a defendant in a civil action;

In this context, it may be appropriate to reproduce the observations made by Sharvananda, J., in the case of *The Ceylon Mercantile Union Vs. The Insurance Corporation of Sri Lanka* 80 N.L.R. Page 309 at 314.

“A registered Trade Union has thus been given recognition by law as a body distinct from individuals who from time to time compose it, although it is an unincorporated body. By registration, the Trade Union acquires some ‘existence’ in law apart from the members. It is thus a statutory legal entity capable of rights and duties. A Trade Union (which is a body unincorporated) is a separate entity.

.....
The dispute complained of in the plaint is the dispute of each member with the Corporation. The plaintiff-Union has no direct interest in the said dispute. In the circumstances, it has no locus standi at all and is not entitled to come to Court for any relief based on the contracts of its members.....

.....unfortunately for the Plaintiff, the legislature has not made any provision giving legal sanction for a registered trade union to institute an action on behalf of its members in a Court of law. It is to be noted however, that the legislature has, in

*the Industrial Disputes Act (Chapter 131), provided that a trade union could on behalf of a workman who is a member of that union, make an application in writing to a Labour Tribunal for relief (Section 31B). Thus, **though the legislature is aware of the status and function of a trade union, it has to date, failed to make statutory provision for a registered Trade Union to represent its members in civil proceedings in a Court of Law.*** (emphasis added)

Thus, it is abundantly clear that a Trade Union is not legally empowered to represent its member as a Plaintiff or a Defendant in civil proceedings in a Court of law.

Mr. Romesh de Silva, P.C. further relied on the case of Public Services United Nurses Union Vs. Jayawickrama & Others (1988) 1 S.L.R. 229 and argued forcefully that when the Trade Union and its Secretary instituted proceedings under Article 126, the Supreme Court without striking out the Petitioner union as having no locus standi, allowed the application with costs in a sum of Rs. 5000/= which should be paid by the State to the **Petitioners**. (emphasis added). It is on this basis, Counsel submitted that the Court recognized the right of the trade union to institute proceedings under Article 126.

I do not find myself able to accede to the argument advanced by Mr. Romesh de Silva for two reasons. Firstly, no objection was taken by the Respondents in the said application that the Public Services United Nurses Union had no locus standi to institute an application under Article 126 of the Constitution and the Court did not have the benefit of any argument of the learned Counsel on that issue. Secondly, in any event, the Second Petitioner was a Nurse and the Secretary of the First Petitioner Union, whose fundamental right of equality guaranteed under Article 12 had been violated. Furthermore, the Second Petitioner is a "Person" within the meaning of Article 126(2) of the Constitution. Thus, the case could have proceeded even if the first Petitioner, namely Public Services United Nurses Union was struck down.

Mr. Romesh de Silva also referred to the case of *Environmental Foundation Ltd. Vs. Urban Development Authority* (2009) 1 S.L.R. 123 and argued that the Court took a liberal approach whilst arriving at a conclusion that the word "person" in Article 12 includes a juristic person.

In the Case of Environmental Foundation Ltd. (supra) when an objection was raised as to the maintainability of the application on the ground that the Petitioner was an incorporated company, S.N.Silva, C.J. held that the word “persons” as appearing in Article 12(1) should not be restricted to “natural” persons but extended to incorporated bodies having legal personality. His Lordship further noted that in several cases this Court has given relief to **incorporated bodies** that have a legal personality recognized by law. (emphasis added) (*Janatha Finance and Investments Ltd. Vs. Liyanage and Others*, 1983 – 2 S.L.R. 111; *Smithkline Beecham Biological S.A. and Smithkline Beecham Mackwoods Ltd. Vs. State Pharmaceutical Corporation of Sri Lanka and Others* 1997 – 3 S.L.R. 20; *Leader Publications (Private) Ltd. Vs. Ariya Rubasinghe and Others* 2000- 1 S.L.R. 265) In any event, *Environmental Foundation Ltd.* (supra) case was filed in the public interest in order to preserve, safeguard and protect public interest. Hence, incorporated bodies recognized by law were permitted to file action in terms of Article 126(2) of the Constitution.

On 29th March 2016, a Motion was filed by the Attorney-at-Law for the Petitioner seeking permission to amend the caption to the Petition by adding Mr. J.M.D. Wijeweera who is the Secretary of the Petitioner Union as the Second Petitioner, out of an abundance of caution. When the Motion was supported on 01st April 2014, learned Deputy Solicitor General and Mr. Mustapha, P.C. objected to the said Motion and submitted that order on the Preliminary Objection that has been raised by them is reserved and in any event, the patent lack of jurisdiction to maintain the application cannot be cured at this stage. In these circumstances, the request of the Petitioner contained in the Motion dated 29th March 2016 was refused by Court.

Thereafter, on 7th April 2016, Attorney-at-Law for the Petitioner filed another Motion citing an Order made by this Court in S.C.(L.A.) Appeal No. 74/16 on 1st April 2016, stating that the Order is relevant to the present application where an objection was taken that the Petitioner failed to comply with Section 8 of the Supreme Court Rules, in that the Petitioner failed to serve notice on the Respondents, the Court made the following Order :-

In consideration of his preliminary objection, we have considered that this objection is of technical nature. In this regard I cite the judgment of AbrahamCJ. In Velupille Vs.

Chairman Urban Council Jaffna, 39 N.L.R. 434. His Lordship remarks thus. "This is a court of Law. This is not an academy of law." In W.A. Mendis and Company vs. Excise Department in 1991 – 1 SLR 351 citing Velupille Vs. the Chairman of Urban Council of Jaffna remarks thus; "Supreme Court is a Court of Justice which would not be trampled by technical objections and that it is not an academy of law." In Alghan and others vs. Udeshi and others, His Lordship G.P.S. De Silva CJ. Observes thus: "that it is to remember that court should not be petted by technical matters and only on matters of principle." In the legal literature, I hold that preliminary objection raised by respondent is a technical objection and we are of the view that this Court should not be fettered with technical objections. We are of the view that appeal must be heard on merits. We therefore overrule the preliminary objection. Petitioner's Counsel is allowed to support his application."

However, it may be noted that in the case of *Tissa Attanayake Vs. Commissioner General of Elections & Others* (S.C. Spl.L.A. 55/2011 – S.C. Minutes of 4.7.11) where an objection was taken by the Senior State Counsel that the Application for Special Leave to Appeal should be dismissed as the Petitioner had not complied with Rule 8(3) and Rule 40 of the Supreme Court Rules, 1990. Dr. Shirani A. Bandaranayake, C.J. (with P.A. Ratnayake, P.C. J. and Priyasath Dep, P.C., J. agreeing) observed as follows:

*"The Supreme Court Procedure laid down by way of Supreme Court Rules made under and in terms of the provisions of the Constitution cannot be easily disregarded as they have been made for the purpose of ensuring the smooth functioning of the legal machinery of this Court. When, there are mandatory Rules that should be followed and when there are preliminary objections raised on non-compliance of such Rules, those objections cannot be taken **as mere technical objections**. (emphasis added).*

In a subsequent case of *Batugahage Don Udaya Shantha Vs. Jeevan Kumaratunga* (S.C. (Spl.) L.A. 4/2010 – S.C. Minutes of 29.3.2012) when an objection was taken for non-compliance with Rule 8(3) Dr. Shirani A. Bandaranayake, C.J. (with K. Sripavan, J. & Priyasath Dep, P.C., J. agreeing) upheld the said objection and notes as follows:-

*"If a party neglects or ignores to comply with such Rules, if the other party takes an objection on that basis, such an objection **cannot be ignored on the basis of***

categorizing it as a technical objection as the fault lies with the party who had been reckless and negligent so as to ignore the written procedures laid down under the Supreme Court Rules. (emphasis added)

However, in the case of *Sumith Ediriwickrama & another Vs. Richard Ratnasiri & others* (S.C. Appeal No. 85/2004 – S.C. Minutes of 18.12.2012) an objection was raised by the Counsel for the Respondents nearly ten years after the Special Leave to Appeal Application was filed and after leave was granted by Court, on the basis that the Appellants failed to comply with Rule 8(3) of the Supreme Court Rules, 1990. Learned Solicitor General argued that after leave was granted, the Appellants and the Respondents made several attempts to settle the matter and in fact, the Appellants had released a sum of money to the Respondents that was available, as an ex-gratia payment, the Respondents were precluded in law from raising the said Preliminary Objection at a late stage. The Court speaking through Marsoof, P.C. J. (with Sripavan J. & Imam J. agreeing) agreed with the submission of the learned Solicitor General and overruled the objection. It must therefore be emphasized that much depends on the facts and circumstances of each case where the Court makes order with regard to non-compliance with the Supreme Court Rules. However, if a party decides to act recklessly and an objection is taken without delay the Court has held that such a party would have to face the consequences which would follow in terms of the Supreme Court Rules or the relevant legal provisions of the law.

The case cited by the Petitioner is in respect of a Leave to Appeal Application where the Petitioner failed to follow the procedure laid down in the Supreme Court Rules. However, the Preliminary Objection raised by the Respondents in this application affects the jurisdiction of the Court in entertaining the application. Thus, there is a fundamental difference between the two cases. This Court cannot simply disregard the Preliminary Objection which goes to the root of its jurisdiction.

The fundamental rights, which are declared and recognized and set out in detail in Chapter III of the Constitution, have been, by Article 4(d) directed to be respected, secured and advanced by all organs of the Government and shall not be restricted save in the manner and **to the extent provided in the Constitution.** (emphasis added). Provision is made by Article 126(2) for a person who alleges that a fundamental right of his has been infringed or

is about to be infringed, to present a petition to the Supreme Court for relief or redress within a period of one month. It specifies the manner in regard to the taking of steps by an aggrieved party. While interpreting the provisions of the Constitution, it has to be remembered that although a Constitution, being essentially in the nature of a statute, the general rules governing the construction of statutes apply to the construction of the Constitution also, and that the fundamental rule of interpretation of the same, namely, that the Court will have to ascertain the intention gathered from the words of the Constitution, yet, by reason of a Constitution as being the Supreme and fundamental law, some special rules apply for the interpretation of a Constitution.

In this regard, I respectfully adopt the words of a learned judge who stated thus :-

“Although we are to interpret the words of the Constitution on the same principle of interpretation as we apply to any ordinary law, these very principles of interpretation compel us to take into account the nature and scope of the Act that we are interpreting – to remember that it is a Constitution, a mechanism under which laws are to be made and not a mere Act which declares what the law is to be” – (1908) 6 Com. L.R. 469 per Higgin J. “

Bindra on *“Interpretation of Statutes”* 10th Edition at page 1308 states thus :

“A cardinal rule in dealing with constitution, however, is that they should receive a consistent and uniform interpretation, so that they shall not be taken to mean one thing at one time and another thing at another time, even though the circumstance may have so changed as to make a different rule seem desirable. Constitutions do not change with the varying tides of public opinion and desire. The will of the people therein, recorded is the same inflexible law until changed by their own deliberative action, and therefore, the courts should never allow a change in public sentiment to influence them in giving a construction to a written Constitution not warranted by the intention of its founder. If the words of the article are clear, notwithstanding any relevant convention, effect will, no doubt, be given to the words, while interpreting a Constitution, which establishes a parliamentary system of government with a Cabinet, one may well keep in mind the conventions prevalent at the time the Constitution was framed”

Thus, it is the duty of the Court to determine in what particular meaning and particular shade of meaning the word or expression was used by the Constitution makers. In the determination of S.C. (S.D.) No. 19/2016, the Court observed that in Chapter III dealing with fundamental rights a “citizen” has been guaranteed the fundamental rights as set out in Articles 12(2) and 14(1) whereas a “person” has been guaranteed the fundamental rights enshrined in Articles 10,11,12(1) and 13. This clearly shows that Parliament has used different words as disclosed by the phraseology which is intended to fulfil the aspirations of the people. For example, in Articles 14A and 121(1), a different interpretation was given to the word “Citizen” which includes a body whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens. In Article 158, the definition given to the word “person” includes a body of persons or any authority. However, no such extended meaning has been given to the word “person” in Article 126(2). Where the scheme of the Constitution clearly shows that certain words or phrases were deliberately omitted by the legislature for a particular purpose or motive, it is not open to the Court to add those words either by conforming to the supposed intention of the legislature or because the insertion suits the ideology of the Judges deciding the case.

In S.C. (S.D.) No. 19/2016(supra) the Court made the following observations:

“The learned Counsel for the Petitioners claimed that the Petitioners are Trade Unions registered under the Trade Unions Ordinance and as such, they can sue and be sued in view of Section 30(1) of the Trade Unions Ordinance. Bindra (Interpretation of Statutes, 9th Edition- page 1168) states that , “While the Constitution is the direct mandate of the people themselves, the statute is an expression of the will of the legislature only, though the legislature is also the representative of the people. A Constitution is but a higher form of statutory law....” We are of the view, that Section 30(1) gives the Petitioners the right to sue and be sued whereas Article 121(1) of the Constitution which is the Supreme Law of Sri Lanka lays out a different constitutional requirement which has to be mandatorily complied with. “ If the language of a statute is plain, admitting of only one meaning, the legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead to absurd or mischievous results :

Vacher & Sons Ltd. V. London Society of Compositors (1913) All E.R. at121 – Per Lord Atkinson”.

It would thus be seen that Article 126(2) makes no provision for a broad definition of the word “person” to include an unincorporated body of persons or trade unions. However, the Court has extended the meaning of “person” to incorporated bodies, by judicial decisions. I am unable to extend the meaning of “person” to unincorporated bodies like a trade union, as that was never the intention of the legislature. Explicit words are necessary to achieve that purpose. The primary rule of construction is to intend the legislature to have meant what they have actually expressed. The object of all interpretation, is to discover the intention of the legislature. On a plain reading of Article 126(2) it is indeed clear that no other rule of interpretation can be applied so as to modify the plain meaning of the word “person”. To do so, in my view would be to amend the said Article and thereby participate in a naked usurpation of the legislative function under the thin guise of interpretation.

The traditional rule in regard to **locus standi** is that only a person who has suffered or likely to suffer legal injury has the right to seek judicial redress. I have had the privilege of examining as to how the rule of **locus standi** has been broadened by the Indian Courts. Article 32 of the Indian Constitution guarantees the right to move the Supreme Court **by appropriate proceedings** for the enforcement of the rights. However, under Article 17 of our Constitution read with Article 126(2) only the person whose fundamental right has been violated may invoke the jurisdiction of this Court either by himself or by an Attorney-at-Law on his behalf. The Indian Constitution did not state that the aggrieved person himself shall have the right to move Court, whereas our Constitution mandates that the right to move the Supreme Court is restricted to the person whose own rights have been infringed or about to be infringed. Further, Article 32 of the Indian Constitution permits for the enforcement of fundamental rights against legislative action as well. The provision of Acts of Parliament and the Ordinances of State Assemblies may be struck down as violating the fundamental rights in proceedings under Article 32. The fact that the Indian Supreme Court widened the rule of locus standi in several of its judgments does not mean our Courts have to give a broader definition to the words “person aggrieved”. I am firmly of the view that an interpretation to Article 126(2) should not be guided by the interpretation given to Article 32 of the Indian

Constitution as there is a fundamental difference in the conceptual structure of the said two Articles. (emphasis added)

In *Fernandes Vs. Liyanage* (FRD (2) 409 at 418) Sharvananda J. noted that “one cannot claim standing in Court to vindicate the constitutional rights to some third party, however much one may be interested in that party.” In *Visualingam and Others Vs. Liyanage and others* (1983) 2 S.L.R. 311 at 344, Soza J. reiterated the views of Sharvananda, J. in the following manner :-

“Sharvananda J proceeds (in case No. 116/82) to point out that in accordance with the provisions of Articles 17 and 126 of our Constitution the Court will grant relief only if the infringement is by executive or administrative action and the complainant is directly affected by the infringement. A complainant cannot seek relief because someone else in whom he is interested is affected by the act complained “.

The case of *Somawathie Vs. Weerasinghe* (1990) 2 S.L.R. 121 is also relevant to be considered. When an application was made by the Petitioner on behalf of her husband who was in detention, Amerasinghe, J. held that the Petitioner had no locus standi to make an application on behalf of her husband as Article 126(2) is precise and unambiguous and as such the words themselves declare the intention of Parliament.

The rulings of the Supreme Court is not scriptural sanction but is of ratio-wise luminosity within the edifice of facts where the judicial lamp burns the legal flame. Considering the background and the circumstances in which Article 126(2) was enacted, it is not possible for me to accept the contention suggested by Mr. Romesh de Silva, P.C. on behalf of the Petitioner.

The Court has in certain circumstances allowed a public spirited individual or a social action group to bring an action for vindication of the fundamental right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position unable to approach a Court of Law for justice. It is a fascinating exercise for the Court to deal with public interest litigation because it is a new jurisprudence which the Court must be careful to see that a member of the public who approaches the Court in cases of

this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. However, the instant application filed by the Ceylon Electricity Board Accountants Association is not a public interest litigation nor has it been filed on behalf of a group of persons who are in a disadvantaged position by reason of poverty or some disability.

In view of the foregoing reasons, I hold that in the absence of a specific provision permitting a Trade Union to institute action on behalf of its members, the Petitioner Union cannot have and maintain this application on behalf of its members in terms of Article 17 read with Article 126(2) of the Constitution. The preliminary objection raised by the learned Deputy Solicitor General and the learned President's Counsel for the 13th respondent is entitled to succeed. The application is therefore dismissed in all the circumstances without costs.

This order does not however preclude a person who has in fact suffered an injury by reason of actual continuous violation of his fundamental rights, bringing an action against the Respondents for judicial remedy. The Court is mindful that it would be disastrous for the rule of law, if such a person is prevented from bringing action, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it.

CHIEF JUSTICE.

P.DEF, P.C. J.,

I agree.

JUDGE OF THE SUPREME COURT

UPALY ABEYRATHNE, J.

I agree.

JUDGE OF THE SUPREME COURT

