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

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

C.A. CASE NO. WRT/0607/25

1. Dissanayake Mudiyanselage Rohana Dissanayake,
   No. 225, Ihala Kalankuttiya,
   Kalankuttiya.

2. Hettiarachchige Upali Hettiarachchi,
   No. 208, Lolugaswewa,
   Bulnawa,
   Galnawa.

PETITIONERS

Vs.

1. R.M. Ranjith Madduma Bandara,
   Secretary,
   Samagi Jana Balawegaya,
   No. 592, Bangala Junction,
   Kotte Road, Pitakotte.

2. N.P.P.I.R. Gunarathne,
   Returning Officer (Kekirawa Pradeshiya Sabha),
   Anuradhapura District Election Office,
   Anuradhapura.

3. R.M.A.L. Rathnayake,
   Chairman,
   Election Commission,
   Election Secretariat,
   Sarana Mawatha, Rajagiriya.

4. M.A.P.C. Perera,
   Member,
   Election Commission,
   Election Secretariat,
   Sarana Mawatha, Rajagiriya.

5. A.M. Faaiz,
   Member,
   Election Commission,
   Election Secretariat,
   Sarana Mawatha, Rajagiriya.

6. Anusuya Shanmuganathan,
   Member,
   Election Commission,
   Election Secretariat,
   Sarana Mawatha, Rajagiriya.

7. Lakshman Dissanayake,
   Member,
   Election Commission,
   Election Secretariat,
   Sarana Mawatha, Rajagiriya.

8. Saman Sri Ratnayake,
   Commissioner General of Elections,
   Election Commission,
   Election Secretariat,
   Sarana Mawatha, Rajagiriya.

RESPONDENTS

BEFORE : K. M. G. H. KULATUNGA, J.

COUNSEL : Sandamal Rajapakse with Kalpanee Dissanayake for the Petitioner.
Manohara Jayasinghe, DSG, with Dilantha Sampath, SC, for the 2nd to 8th Respondents.

ARGUED ON : 03.10.2025

WRITTEN SUBMISSIONS ON : 16.10.2025 and 17.10.2025

DECIDED ON : 11.11.2025

JUDGEMENT

K. M. G. H. KULATUNGA, J.

1. This application arises in relation to the nomination of women members to the Galnewa Pradeshiya Sabha upon the Local Government Elections held on 06.05.2025. The petitioners were persons nominated by the Samagi Jana Balawegaya political party as candidates for the Galnewa Pradeshiya Sabha election. The issue of contention in this application is the nomination of women members to the said local authority. Upon the declaration of the results and the determination of the elected and members to be returned (nominated on the proportional representation basis), the returning officer of the Anuradhapura Election Office (2nd Respondent), by letter dated 12.05.2025 (P-4), directed the Secretary General of the Samagi Jana Balawegaya (1st respondent) to nominate of

three women members. The petitioners are challenging this direction made by P-4.

2. Mr. Sandamal Rajapakse, appearing for the petitioners, submitted that according to the declared results, the Samagi Jana Balawegaya ("SJB") obtained a total of 4454 votes, being 18.23% of the total votes polled. However, none of its candidates were elected from any ward. On the proportional representation basis, three members were to be returned from the SJB. The 2nd respondent by letter P-4 has required that all three of them should be women members. It is Mr. Rajapakse's argument that directing all three members to be nominated be women, by itself, is unreasonable. Mr. Rajapakse then submitted that no statutory provision empowers the 2nd respondent to so direct.

3. The Galnewa Pradeshiya Sabha consists of seventeen members, of which ten are elected from the wards. Seven others are nominated on a proportional basis and are referred to as "returned" members. Accordingly, in view of the 25% requirement of women's representation, there should be at least four women members in the Galnewa Pradeshiya Sabha. Upon the election, Jathika Jana Balawegaya ("NPP") has secured 14,371 votes, being 58.83%, and won all the wards, thereby securing 10 elected members at the election. End of the day, all the elected members were thus secured by the NPP. Then, on the proportional basis allocation, the United National Party, Peoples' Alliance, Sri Lanka Podu Jana Peramuna and Sarwa Jana Balaya were all allocated one returned member each, and Samagi Jana Balawegaya was allotted three returned members. The 2nd respondent by letter dated 12.05.2025 (P-4), has directed the SJB that all three nominees should be women candidates.

4. The position of the 2nd to 8th respondents is that in view of the Provisions of Section 65AA(2), the 2nd respondent, the returning officer, is required and compelled to so direct as done by P-4. It is their argument that

Section 65AA(2) provides that if a political party or independent group has secured 20% of the total valid votes and secured three members or more, then the 3rd respondent is required to make a directive under Section 65AA(3) as to the naming and nomination of women members. According to the learned Deputy Solicitor General, the only party that comes within this qualification is the SJB. Then, as there is only one elected woman member in this Pradeshiya Sabha, it should at least have three more members to fulfil the 25% requirement. In this context, it is the position of the 2nd to 8th respondents that the SJB is required to make available such number of women members from their allocated returned members.

5. Mr. Rajapakse, on behalf of the petitioners, vehemently objects to this argument and advances a two-pronged argument: firstly, based on the interpretation of Section 65AA(2), and secondly, based on the franchise of the people. Mr. Rajapakse's argument on the interpretation of Section 65AA is that the following two preconditions should be satisfied for the 2nd respondent to make a directive under subsection 3 thereof; they are that such party should have secured more than 20% of the total valid votes polled and should have secured three or more members. While adverting to the development of and amendments to this provision, Mr. Rajapakse also attempted to impress upon this Court that it should be less than three members.

6. The nature and manner of conducting the election and the apportionment and allocation of the elected and nominated members, as well as the relevant women members, are more or less provided for by the provisions of Sections 65A and 65AA, read with Section 27F(1), of which I will first consider Section 65AA, which reads as follows:

> *"(1) Where the number of members elected from any recognized political party or independent group for a Local Authority results in an overhang and thereby exceeds the number ascertained to be elected and returned as members under subsection (3) of section 65B and such number of members so elected do not include any women members, then the provisions of subsections (3) and (4) of*

this section shall not apply to such recognized political party or independent group.

(2) Where any recognized political party or independent group has received less than twenty per centum of the total number of votes polled in a local authority area, and has less than three members elected or returned, then the provisions of subsections (3) and (4) of this section shall not apply to such recognized political party or independent group.

(3) The apportionment of women members to be elected and returned to each local authority from the recognized political parties and independent groups other than the political parties and the independent groups referred to in subsection (2) of this section, shall be determined by the Commissioner of Elections, taking into consideration the number of valid votes polled by the other recognized political parties and independent groups in all wards of such local authority, and the method of apportionment set out in Article 99A of the Constitution of the Democratic Socialist Republic of Sri Lanka shall mutatis mutandis apply thereto.

(4) Where the number of women members elected for all wards of any local authority area from any recognized political party or independent group other than the recognized political party or independent group referred to in subsection (1) or (2) of this section, is less than the number apportioned in terms of subsection (3) of this section, then the shortfall in the number of members shall be returned from among the women candidates in the first nomination paper or the additional nomination paper other than the women candidates who have been elected or are disqualified to be a member under section 9."

According to which, upon determining the entitlement of each respective party or independent group, the returning officer will allocate the number of nominated members. Upon so determining the number, the returning officer is also empowered to determine the number and apportion the women members to be elected and so returned, as provided for by subsection (3). The said subsection (3) invests the power in the mandatory form and expressly provides that in making the determination it shall take into consideration: (a) the number of valid

votes polled by other political parties and independent groups in all wards or local authorities; and (b) the method of apportionment prescribed is the same as provided for by Article 99A of the Constitution. Thus, Section 3 clearly provides for a method and formula and criteria to be followed in determining the respective number of women members to be returned from the recognised political parties and independent groups. Therefore, the directive made under subsection (3) should have a correlation to the votes polled by other recognised political parties as well.

7. Section 65AA (2) is couched in the negative form, in that, the said provision specifies the circumstances in which the mandatory nomination may not be ordered. This provision thus in fact provides for the circumstances under which the Provisions of subsection 3 will not apply. In so specifying, there are two pre-conditions laid down; what is important is that the said two preconditions are expressed in the conjunctive form by the use of the word '*and'*. The resulting position is that the provisions of the subsection 3 will not be applicable only to such persons who have both the prerequisite attributes so stipulated. This is so, as it is couched in the conjunctive form. The effect and import of the form in which Section 65AA (2) is couched is that unless such political party has not secured 20% of the votes **and** not obtained three or more members, such party cannot claim the exemption. Both these attributes should be satisfied. This is the effect and the resulting position of the negative non-application.

8. It is a well-settled principle of statutory interpretation that provisions framed in negative and prohibitory terms are ordinarily mandatory in nature and must be construed strictly. As observed in *Bindra on Interpretation of Statutes* (12th Ed., at pp. 442–443), citing Crawford, *Statutory Construction*, pp 523-24,

> *"Prohibitive or negative words can rarely, if ever, be directory, for there is but one way to obey the command 'thou shalt not,' and that is to completely refrain from doing the forbidden act. Negative,*

> *prohibitory and exclusive words or terms are indicative of a legislative intent that the statute is to be mandatory."*

Thus, where the legislature employs the conjunction *"and"* in a clause couched in the negative form, the conditions connected thereby are conjunctive and cumulative, and the failure to satisfy even one of them precludes the operation of the exemption. Applying this principle, I am of the view that Section 65AA(2), being framed in the negative form and using the conjunctive *"and",* sets out two preconditions that must both be satisfied before the exclusion in that subsection can operate. Unless a political party or independent group has **both** received less than 20% of the total votes polled **and** has less than three members elected or returned, the non-application clause therein cannot be invoked. The provision, therefore, is of a mandatory character, and the exemption is to be construed narrowly. I observe that Mr. Rajapakse has failed to fully appreciate the nature and effect of a provision containing a prohibition or a non-application in the negative form. That being so, the SJB, though it may not have secured 20% of the votes, has three members. Accordingly, as the said provision is of a mandatory character, the SJB, having failed to satisfy both conditions, cannot claim the exemption under subsection (3).

9. In the above circumstances, I find that the 2nd respondent is empowered to make a directive under subsection 3, which he has done by P-4. Next, Mr. Rajapakse submitted that it is not reasonable and just to require the SJB to make all three nominations of women candidates. The starting point to consider this argument is the Section 27F(1). Section 27F of the Local Authorities Election Ordinance provides as follows:

> "*(1) Notwithstanding any provision to the contrary in this Ordinance, not less than twenty five per centum of the total number of members in each local authority shall be women members:*
> *provided that, where the number constituting twenty five per centum of the total number of members in a local authority in an integer and fraction, the integer shall be deemed to be the number which shall constitute twenty five per centum for the purpose of this section.*

(2) The Commissioner of Elections shall by notice published in the Gazette, specify the number of women candidates to be nominated in respect of each local authority."

10. According to which, it certainly requires that 25% of the members **shall** be women members. Further thereto, this provision is conferred with priority by the use of the words '*notwithstanding any provision to the contrary,'* which is a *non obstante* clause. Therefore, the statute certainly requires the minimum 25% women representation. However, the issue for determination and the complaint is not the 25% mandatory requirement prescribed by Section 27F (1), but the legality of the directive compelling the SJB alone singularly to provide all such women members but one who has already been elected under the NPP. Mr. Rajapakse tags on his argument to the broader issue of the will of the people or franchise.

11. The object and purpose of Section 27F(1) is certainly to ensure the minimum mandatory women's representation in the local authority. This, as we all are well aware, is to encourage and ensure women's participation in the arena of local government. This obligation is not placed on the any particular party or independent group. It is an overall general requirement as to the composition of such local government body. In this context, Section 65AA(2) empowers the returning officer to direct any party or independent group unless such party or group had secured less than 20% of the votes and less than three members. The three members may be either elected or returned members.

12. Therefore, the legislature has clearly empowered the 2nd respondent returning officer, to direct even a party or group which had secured three members or more, but less than 20% of votes, to nominate women members. In this application, the NPP has secured ten elected members from the wards. Such members being elected by the popular vote is a clear manifestation of the will of the electors in the exercise of their franchise.

13. It must also be borne in mind that the franchise represents one of the core attributes of the sovereignty of the People, guaranteed by Article 3 of the Constitution. The will of the electors, as expressed through their votes, constitutes the foundation of representative government. The members who are directly elected from the wards are thus a manifestation of the will of the People, and any administrative or quasi-judicial intervention that distorts the outcome of that will must be viewed with the utmost caution. In ***Mediwake and Others vs. Dayananda Dassanayake, Commissioner of Elections and Others*** [2001] 1 Sri L.R. 177, His Lordship Justice Fernando articulated this as follows:

> *"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 a right to a genuine election guaranteeing the free expression of the will of the entire electorate to which he belongs."*

14. If a party secures the full complement of the entitlement by winning the wards, such party would not be entitled to a bonus seat, so to say. In that context and scenario, the party contends the majority of the members has only elected members from the respective wards. As they are all so elected, the 2nd respondent cannot practically direct such party to nominate any women members. Similarly, except for the SJB, all other parties securing one returned member each has not secured 20%. As such, the 2nd respondent cannot direct such political parties either. This has left the 2nd respondent with no option but to direct the SJB to make all three nominations with women members.

15. As aforestated, the liability obligation and responsibility to ensure the 25% of women members is with all parties and cannot be imposed singularly upon a particular party. If at all, each party or independent group could be called upon or assumed to be responsible for or obligated to name members to be returned, keeping to the 25%

requirement proportionately. There is no rationale or justification to compel a single party to nominate all three of its returned members as women over and above the proportionate 25%, if at all. In the present scenario, keeping to the nearest integer and directing the nomination of one woman member of the three returned members is what, to my mind, is lawful and reasonable.

16. Although Section 27F(1) of the Local Authorities Elections Ordinance mandates that not less than 25% of members of a local authority be women, such obligation is general in nature and must be applied collectively across all political parties and independent groups. Due to the fortuitous circumstances calling upon the SJB to shoulder the entirety of the quota, the returning officer exercised his discretion without a rational basis, thereby acting in a manner contrary to the legislative intent and principles of fairness. This aligns with the "Wednesbury unreasonableness" standard set out in the landmark decision of ***Associated Provincial Picture Houses Ltd vs. Wednesbury Corporation*** [1948] 1 KB 223, where Lord Greene, M.R., held that a decision is unreasonable if it is—

> "*something so absurd that no sensible person could ever dream that it lay within the powers of the authority."*

Lord Greene, M.R., further, at 229, held thus:

> *"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done.* ***For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law****. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably"* [emphasis added].

Where an act is challenged as being arbitrary and/or unreasonable, Lord Greene, M.R., held that the Court's only task was the following:

> *"The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only,* ***to see whether the local authority have contravened the law by acting in excess of the powers*** *which Parliament has confided in them"* [emphasis added].

17. In Lord Diplock's exposition of the principles of judicial review in the decision of ***Council of Civil Service Unions vs. Minister for the Civil Service*** ("the GCHQ case"), 'irrationality' was described as follows:

> *"By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards v. Bairstow [1956] AC 14 of* ***irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred unidentifiable mistake of law by the decision-maker.*** *'Irrationality' by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review"* [emphasis added].

18. The petitioners, being on the list, have a legitimate expectation of the allocation of the three returned members; at least two would be male members. This is in keeping and in accordance with the proportionate application of the 25% quota fixed by Section 27F. Thus, a directive contrary to this will certainly result in a violation of the legitimate expectation of such other members, namely the petitioners. The impugned directive, being contrary to such expectation and to the proportional spirit of the electoral process, is therefore unreasonable in law. This is adverted to and recognised in ***Fernando and Others vs.***

Associated Newspapers of Ceylon Ltd and Others (2006) 3 Sri L.R. 141, as follows:

> *"The existence of a legitimate expectation, as opposed to a legally enforceable right, is a relevant factor in considering the just and equitable relief this Court may grant under Article 126(4) of the Constitution when it is shown that the action of the executive which frustrates the legitimate expectation amounts to a denial of the right to equal protection of the law guaranteed by the Constitution. 'A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law.' Halsbury's Laws of England, 4th Ed., Vol. 1(1) P. 151, paragraph 81."*

19. No doubt, Section 27F is couched in very strong mandatory language. However, the overall statutory provisions appear to have not provided for the current situation and scenario where the composition and the members secured is distributed amongst a large number of parties. Such circumstance cannot be a basis for the 2nd respondent to compel a single party to nominate women members exceeding the overall general obligation of 25% women representation proportionately. To that extent, the legitimate expectation of the petitioners have been breached. Then, on the other hand, the statutory provisions do not elaborate or provide for the exact manner or the mode of determining the number of women each party should provide. There is a lacuna in the law to that extent. It is to be rectified. However, such circumstances cannot justify an unreasonable directive in violation of the legitimate expectation and also imposing a liability upon an individual party or group to provide and give effect to the women's representation as required by Section 27F.

20. It is not for this Court to consider as to how Section 27F would and should be complied with or secured by the 2nd respondent. The matter before this Court is the violation of the lawful rights and legitimate expectation and the legality of the directive made by P-4. There is no provision specifically providing for the manner of apportionment of women members amongst the political parties or the independent

groups. Section 65AA(3) provides for certain matters the Commissioner of Elections should take into consideration in determining this issue, being the number of valid votes polled by other recognized political parties and independent groups in all wards of such locality and the method of apportionment set out in Article 99A of the Constitution. Accordingly, a discretion is conferred upon the 2nd respondent to determine the number of women members such party or group is required to nominate.

21. In the present application, the 2nd respondent has mechanically directed that all nominated members be women. As submitted during the arguments, it appears that the 2nd respondent has so directed simply because it was only the SJB that remained amenable to a directive under subsection (3) of Section 65AA as aforesaid. To my mind, nomination of women members in compliance with the 25% requirement cannot be imposed upon one party or group in this form. As contemplated by 65AA(3), it should be proportionate; accordingly, the blanket and unqualified directive that all nominated members of SJB be women members is arbitrary, irrational, and unreasonable in context and to that extent.

22. Accordingly, this Court is satisfied that the 2nd respondent has acted arbitrarily, in excess of his authority, and that there is a denial of the rights and the legitimate expectation of the petitioners. Most of all, the said directive is unreasonable. As such, the petitioners are entitled to relief as prayed for by prayer *(c)* to the extent of quashing the mandatory requirement of all three members being women.

23. Accordingly, the writ is issued to quash so much of the directive made by P-4 to that extent. It is now left to the 2nd respondent upon considering the relevant matters, to determine the number of women members that the SJB is required to nominate. In the above circumstances, the petitioner is not entitled to the other relief sought.

24. Accordingly, the application is partially allowed to that extent. However, I make no order as to costs.

Application partially allowed.

JUDGE OF THE COURT OF APPEAL