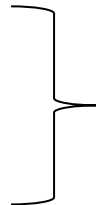




Uva - Provincial High Court Monaragala.

Certified Copy

Monaragala
High Court
Case No.



01 / 2018

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At the Monaragala High Court, Uva Province

In the presence of Additional High Court Judge R.S.A. Dissanayake

Case No: Election Petitions 01/2018

Recorded by: L / L Shyamali Gunawardena.

Date: 2021.07.29

Election petition filed under section 82 (Q) of the Local Authorities Elections Ordinance No. 53 of 1946, as amended by Acts No. 01 of 2002 and 22 of 2012.

Wanasinha Mudiyanseelage Sunil Shantha Wanasinha

Maduruketiya, Kumbukkana,

Moneragala

Petitioner

Vs

**1) Disanayaka Mudiyanseelage Tharanga Harshaka
Priyaprasad Disanayaka.**

No.11, Maduruketiya,
Kumbukkana, Monaragala.

2) Senarath Athula Kumarasiri,

“Anurasiri” 22nd Post, Nakkala,
Monaragala,

3) Jayarathna Mudiyanseelage Rathnayaka,

Pelathawana, Batugamma,
Monaragala.

4) Sunil Vijerama,

**Samagi Mawatha,
22nd Post, Monaragala.**

- 5) **Hapuhannadige Erantha Priya Sudesh de Silava,**
No.176, Pothuvil Road,
Monaragala.
- 6) **Krishnakumari Manoja Lakmini,**
No. 07, Dodamwatta,
Monaragala.
- 7) **Marasinghage Victor Marasingha,**
No.07, Dodamwatta,
Monaragala.
- 8) **Yahampath Arachchige Don Ajith,**
14th Post, Kumbukkana,
Monaragala.
- 9) **Udagedara Saman Kithsiri Bandara,**
No. 75, Hulanadava, (left)
Monaragala.
- 10) **Kanakka Hevage Susantha Premasiri,**
Wedi Kumbura, Monaragala.
- 11) **Devapurayalage Ananda Vijayavardana,**
No. 257, Varava,
Monaragala.
- 12) **Lenadava Lokuge Chandrasiri,**
Waththe Beheth Shalawa,
Monaragala.
- 13) **Kanankagey Vijaya Kumara,**
Maduruketiya Adarsha Gammanaya,
Kumbukkana,
Monaragala.

- 14) Pradeep Dhammika Vithnage,
Batugammana, Junction,
Weliyaya, Monaragala.**
- 15) Herath Mudiyansele Bandara Mahattaya,
Dehikanda Gama, Nakkala,
Monaragala.**
- 16) Mapa Mudiyansele Sisira Senarathna Bandara,
Pathum Sevena, Hulanadava (Left)
Monaragala.**
- 17) Senanayaka Mudiyansele Ramani Rithnayaka,
123, Dodam Panna,
Monaragala.**
- 18) Rajapaksha Mahapedige Udeni Ramyalatha,
No. 17, Sirivijaya Pura,
Monaragala.**
- 19) Thennakoon Mudiyansele Malani Thennakoon,
Karapinchagala Yaya Para, Hindi Kiula,
Monaragala.**
- 20) Weerasekara Mudiyansele Millinawathi,
25/A, Kukurumangoda, Batugammana,
Monaragala.**
- 21) Puhulhenegedara Dilani Dilrukshi,
101/1, Hulanadava South,
Monaragala.**
- 22) Kariyawasam Galoluwage Danusha Chamara
Nanayakkara,
Hindikiwula,
Monaragala.**

- 23) Sandya Anurudhdhika Rathnayaka,
Kandegedara, Dikthalawa,
Batugammana, Monaragala.**
- 24) Rathtnayaka Mudiyanselege Krishantha Nalin
Kumara Rathnayaka,
432, In front of Hospital,
Monaragala.**
- 25) Rathanayaka Mudiyanselege Rathna Weera,
85, Dutugamunu Road,
Monaragala.**
- 26) Thamodaram Jayajeelan,
Aliya Watta,
Monaragala.**
- 27) Ranjith Rathnayaka,
Hulandawa, Monaragala.**
- 28) Arangalage Don Sunil,
Kumbukkana Junction,
Kumbukkana, Monaragala.**
- 29) Yaddehi Ralalage Upul,
28, Wadikumbura Road,
Monaragala.**
- 30) Konara Mudiyanselege Gunawardhana,
Aluthwatta, Wadikumbura,
Monaragala.**
- 31) Rathnayaka Mudiyanselege Pradeep Sisira
Kumara
Wijerathna,
Thenagallanda, Marawa,
Monaragala.**

- 32) Hewa Halpage Chandana Priyalal Pathirana,
219, Wellawaya Road,
Monaragala.**
- 33) Neluwe Mudiyansele Sisira Senarathna,
Horombuwa, Kumbukkana,
Monaragala.**
- 34) Rathnayaka Mudiyansele Ananda Rathnayaka,
Dimuthu, Debadda,
Kivula, Monaragala.**
- 35) Disanayaka Mudiyansele Wasantha
Jayawarsdhana,
Kotigalhela, Nakkala,
Monaragala.**
- 36) Jayarathna Mudiyansele Kalyana priyantha
rathna,
Dehikindagama, Nakkala,
Monaragala.**
- 37) Herath Mudiyansele Siriyalatha,
67, Jayasena Gama,
Kumbukkana, Monaragala.**
- 38) Ranasingha Arachchilage Sandya Dilhani,
47, Aluth Mawatha, Hulandawa,
Monaragala.**
- 39) Kaluarachchige Nilanthi Siroma Kaluarachchi,
24, Weliyaya, Monaragala.**
- 40) Baladurage Thushari Priyadarshanee,
No. 21, Amunudowa, Nakkala,
Monaragala.**

- 41) Kankanam Gamage Charitha Priyadarshanee,
46/B, Hulandawa, Left,
Monaragala.**
- 42) Madiwela Mudiyansele Punchibanda,
Dikthalawa, Batugammana,
Monaragala.**
- 43) Rathnayaka Mudiyansele Muthubanda,
Alias Wattegedara Muthubanda,
Bogaha Asala Niwasa, Kahambana, Marawa,
Monaragala.**
- 44) Dewasingha Hangilgedara Nimal Kumara,
Nimal Weladasela, Kaudava,
Monaragala.**
- 45) Elagalla Haranage Piyasoma.
32/31, Kachcheriya Road, Sirivijaya Pura,
Monaragala.**
- 46) Vijayakoon Mudiyansele Nawarathna Mihira
Bandara,
No. 111/ A, Vihara Mulla,
Monaragala.**
- 47) Kondadeniya Mudiyansele Sudath Indika
Kumara,
20/7, Dutugamunu Lane,
Monaragala.**
- 48) Nallathambi Govinda Raj,
92/2, Kumbukkagahawatta,
Monaragala.**
- 49) Herath Mudiyansele Sanath Gunawardhana,
05 Lane, Sirigala, Monaragala.**

- 50) Disanayaka Mudiyanseleage Sriyanee Priyakanthi,
Boathupitiya Road, Magandana Mula,
Monaragala.**
- 51) Wediwela Mudiyanseleage Nawarathna Bandara,
Sujatha Wedikumbura Road, Weheragala,
Monaragala.**
- 52) Korale Kankanamge Samantha Wijesekara,
248/53, Dhammodaya Mawatha,
Monaragala.**
- 53) Rammandala Ulpatha Kumburage Nimali
Padmalatha,
No. 95, Hulandava South, Monaragala.**
- 54) Hewapedige Somalatha Piyaselee,
No. 30, Jayanil Gama,
Hulandawa South, Monaragala.**
- 55) Herath Mudiyanseleage Mahindapala,
45/2, Hulandawa South, Monaragala.**
- 56) Samasundara Mudiyanseleage Sirimal Kumara
Jayaweera,
Kotigalpola, Nakkala, Monaragala.**
- 57) Disanayaka Mudiyanseleage Sugatha Bandara,
Boathupitiya Road, Magandna Mulla,
Monaragala.**
- 58) Disanayaka Mudiyanseleage Karuna Manike,
Sampath Stores,
Tang Watta, Nakkala,
Monaragala.**

- 59) Anantha Pathiranage Gihani Sachinthani,
No.63, Temple Road, Sirivijaya Pura,
Monaragala.**
- 60) Kodikara Mudiyansele Malkanthi Rathna
Manike,
Bandara Wadiya, Magandana Mulla,
Monaragala.**
- 61) Disanayaka Mudiyansele Nadeera Davinada
Lakshitha Disanayaka,
3/1, Samimale Estate, Monaragala.**
- 62) Ihala Attanayakage Gamini Dissanayaka,
146, Isura, Wellawaya Road, Monaragala.**
- 63) Kiriwanagoda Aluthgedara Upasena Perera,
Bibila Road, Nakkala,
Monaragala.**
- 64) Rathnayaka Mudiyansele Shantha,
Dikthalawa, Batugammana,
Monaragala.**
- 65) Godagama Kankanamage Sanjeewa Rohana
Edirisingha,
Weliyaya, Monaragala.**
- 66) Agalakada Arachchige Ajith Shanatha,
33, Anicute Road,
Monaragala.**
- 67) Kossinna Vithanage Gamini,
7/36, Welewatta,
Monaragala.**

- 68) Maligaspe Koralage Somarathna,
Kumarapura, Kumarapura, First lane,
Depot Road, Monaragala.**
- 69) Parana Pallaiya Guruge Vijesiri,
Pragathi Mawatha, Singhagiri Pura,
Maduruketiya, Kumbukkana.**
- 70) Rajapaksha Kankanamage Nadeeka Madumalee
Jayathilaka,
Kumarapura, Palamu Mawatha, Depot Road,
Monaragala.**
- 71) Gangoda Gedara Upali Edirisingha,
Depot Road, Samagi Mawatha,
Hulandava, Monaragala.**
- 72) Disanayaka Mudiyansele Piyasena,
Galgediyawa, Galbedda,
Monaragal.**
- 73) Aratumadille Mudiyansele Ananada,
Weheragala, Wedikumbura,
Monaragala.**
- 74) Aratu Madille Mudiyansele Gunawathi,
Havana,
Weheragala, Wedikumbura,
Monaragala.**
- 75) Wijalath Virinduge Sumeda Dilhane,
No. 08, Hulandawa Left,
Monaragala.**

- 76) Konara Mudiyansele Madurika Vilasisni
Siripala,
No. 12,
Hulandawa Left,
Monaragala.**
- 77) Hewawalgamage Rupa Indumathi,
Kumrarapura, 3rd Lane,
Depot Road,
Monaragala.**
- 78) Yaddehigedara Kantilatha,
Vihara Mawatha, 22nd Post, Nakkala.
Monaragala.**
- 79) Dodam Pahalage Gunawardhana,
Bo Athupitiya, Magandana Mulla,
Monaragala.**
- 80) Liyana Arachchige Sachintha Danuka Liyana
Arachchi,
248/12, Dhammodaya Mawatha, pothuwil Road,
Monaragala.**
- 81) Rathnayaka Mudiyansele Chathuranga,
37, Bo Gaha Arawa, Hindikiula,
Moanaragala.**
- 82) Rathnayaka Mudiyansele Gunadasa,
11/32,
Kappettipola Road,
Monaragala.**
- 83) Kankanam Witharange Gunasena,
Araliyasevana, Weliyaya,
Monaragala.**

84) Mahinda Deshapriya,

Chair person,

National Election Commission,

Rajagiriya.

85) Nalin G Abesekara,

Member, National Election Commission,

Rajagiriya.

86) Rathnajeewan Hoole,

Member, National Election Commission,

Rajagiriya.

87) R.M.A. L. Rathnayaka,

Member, National Election Commission,

Rajagiriya.

88) Indika Gayan Pathirana,

Assistant Election Commissioner,

89) Retaining Officer,

Monaragala Administrative District,

Election Office,

Monaragala.

90) Officer Of In charge,

Police Station,

Monaragala.

Respondents

Order

01. The Petitioner has filed this election petition in this High Court under Section 82 (Q) of the Local Government Elections Ordinance No. 53 of 1946 as amended by Acts No. 01 of 2002 and 22 of 2012. This petition has been filed on 29.03.2018 in respect of the election held for Maduraketiya Ward of Monaragala Pradeshiya Sabha at the local government election held to elect Councilors for the latter on 10.02.2018.

02. The petitioner is the candidate for Maduruketiya Ward of Monaragala Pradeshiya Sabha, of a recognized political party known as the United National Party. Accordingly, and in terms of Section 82 (R) of the Local Government Elections Ordinance, filing of the petition by the petitioner is valid. (The candidature of the Petitioner is confirmed by the document produced with the petition, marked P. 01)

03. The results of the election held for electing Councilors for Monaragala Pradeshiya Sabha on 10.02.2018 were declared on 11.02.2018, and it is confirmed by the documents submitted with the petition marked P.02 and P.2a. According to the results, the 01st respondent, the candidate of the Sri Lanka Podujana Peramuna (Sri Lanka People's Front), polled 2157 votes in the election held for the Maduruketiya ward of Monaragala Pradeshiya Sabha; and the petitioner, the candidate of the United National Party polled 855 votes. Accordingly, the results of this election were published in the Special Gazette Notification No. 2061 / 42-23 dated 09.03.2018 by the Election Commission. In view of the fact that the said gazette notification has been published on 09.03.2018 and the election petition filed on 29.03.2018 establishes that the election petition has been filed within the stipulated time frame under Section 82 (a) (e) of the Local Government Elections Ordinance .

04. Names of 90 respondents have been included in this election petition and of them 01 - 83 are candidates who have contested the Pradeshiya Sabah elections held on 10.02.2018 for electing the Councilors for Monaragala Pradeshiya Sabha. Accordingly, in terms of Section 82 (T), the inclusion of respondents in this petition is valid.

05. The Section 82 (U) of the Local Government Elections Ordinance specifies the contents to be included in the petition. According to that the following facts are included in this petition.

i. Result sheet of the Election held on 10.02.2018 (Document marked P.2)

ii. Election Result of Maduruketiya Ward (Document marked P.2a)

iii. The Gazette Notification declaring the names of the Elected Councilors of the Monaragala Pradeshiya Sabha (Document marked P. 3)

iv. Concise statement of material facts on which the petitioner relies.

v. Details of acts corruptions and / or illegal activities alleged to have been committed by the 01st respondent from 27.11.2017, i.e. the date of declaration of election till 10.02.2018, the date the election was held. In particular, the petitioner has indicated in his petition that the 1st respondent has committed the following acts of corruption and / or illegal actions.

a) Provision of money and / or material and / or equipment to voluntary organizations in the area by the 1st respondent and / or his agents requesting the former of their support for the 1st respondent or with the intention of obtaining their votes for the 1st respondent.

b) Providing new household electrical connections to certain houses in Maduraketiya electorate by the 1st respondent at his expense, and / or his agents requesting the former of their support for the 1st respondent or with the intention of canvassing their votes for the 1st respondent.

c) Providing new water connections for some homes in Maduraketiya electorate on or around November 28, 2017 by the 1st respondent at his expense, and / or his agents requesting the former of their support for the 1st respondent or with the intention of canvassing their votes for the 1st respondent.

d) Donating money to the *Ekamuthu Avamangalyadara Samithiya* (United Funeral Assistance Society) in Madurukatiya, providing material aid to *Oil Farm Ranamayura Sports Club* and *Kālugala Funeral Relief Society* by the 1st respondent and / or his agents soliciting the former to cast their vote for the 1st respondent.

vi. Accordingly, the petitioner states that the 1st respondent, on account of the activities mentioned above, has committed the offense of offering bribes in violation of the Section 82 (d) of the Local Government Elections Ordinance.

Accordingly, it appears that the petitioner has filed this election petition in compliance with the Section 82 (Q) of the Local Government Elections Ordinance. At the same time, the petitioner has further supported the above facts by an affidavit as stated in that section.

06. Consequent to the filing of this election petition in this Court, notice has been issued to the respondents; proxies filed on behalf of the respondents: 01, 22-41, 42-62 and 63-83 and they have received legal representation of Attorneys at Law. A State Counsel has appeared for respondents 84 - 90. Accordingly, in accordance with Section 82 (V) of the Local Government Elections Ordinance, Hon Predecessors High Court Judge has commenced the hearing of this petition on 10.09.2018. The following witnesses were called for, on behalf of the petitioner, at the hearing.

i. Hewa Gajanayakege Manjula Gajanayake, National Coordinator, Centre for Monitoring Election Violence (CMEV).

ii. Wanasinha Mudiyanseelage Sunil Shantha, the Petitioner

iii. Hettiyakandage Aruna Pushpa Saumyasiri Fernando (An officer attached to the Election Commission, served as the Coordinator of the National Election Complaints Center from 06.01.2018 to 05.03.2018)

iv. Dissanayake Mudiyanseelage Chandani Shyamali Damayanthi Bandara (Officer attached to National Water Supply and Drainage Board, Monaragala Regional Office)

v. Subramaniam Chandra Kumari

vi. Selvaraja Wasantha Kumari

vii. Karimuttu Saravana Kumari

viii. Sinharasu Yoganayagi

ix. Suddakulage Priyanthi

x. Viraiya Kokila

xi. Rohana Nishantha Hettiarachchi, Executive Director, PAFFREL

xii. Anura Shantha Kumara

xiii. Pushparaj Gopal Krishnan

Subsequent to the summoning of evidence of the Petitioner, the Respondents were given the opportunity to give evidence. Except the 88th respondent who has given evidence on behalf of the 84th to 90th respondents, no other respondents have given evidence or testified on behalf of other respondents. Of these witnesses the testimony of the witnesses 12 and 13 named by the Petitioner were summoned before me, and in addition the testimony of the 88th respondent was also called before me.

07. Accordingly, in the capacity of the Elections Judge, my determination is supposed to be made in terms of Section 82 (w) of the Local Government Elections Ordinance.

08. According to Section 82 (W) of the Local Government Elections Ordinance, the Election Judge shall determine whether the Councilor whose return or election is complained of, was duly returned or elected, or whether the election was void; However, Section 82 (P) of the Local Government Elections Ordinance provides for declaring an election void based on an election petition.

Article 82 (P) (1) states that the election of a candidate as a Counselor/ member of any ward of a local authority in an electoral area shall be declared void on an election petition on any of the grounds specified therein, which may be proved to the satisfaction of the Election Judge.

As per Section 82 (P) (2) of the Local Government Elections Ordinance, the election of a candidate as a member of any local authority shall be declared void on an election petition on any of the grounds indicated therein, which may be proved to the satisfaction of the Election Judge.

09) In examining the evidence called on behalf of the petitioner, it appears that he has called the evidence, especially in connection with the offense of 'corruption' which falls under the category 'bribery' described in Section 82 (d) of the Local Government Elections Ordinance. Accordingly, if there is any evidence to the effect that the 01st respondent or any other person on his behalf, has directly or otherwise provided any amount of money or වටිනා ප්‍රතිෂ්ඨාවක් valuables or a gift, loan, or pledge or promised to do so, such commissions fall under the category of offenses specified in the sub-sections (a) and (c) of the Section 82 (d) of the Local Government Elections Ordinance and are punishable under Section 82 (e) of the said Ordinance. Accordingly, it is important to see whether the evidence summoned on behalf of the petitioner have proved that such acts have been committed by the 1st respondents or by some other person on his behalf.

10. The petitioner has mentioned in his petition that the 1st respondent while being a candidate of the Maduraketiya Ward was engaged in distributing money and goods to the voters in Maduraketiya area during the election season. Out of these, the petitioner has given exceptional prominence in his petition to an allegation in which the 1st respondent has allegedly paid the cost of obtaining water connections, on behalf of the people in the Maduraketiya area. The evidence and documents relating to the proof of this charge have been produced by the Petitioner. In particular, in regard to this matter, it is important to consider whether the evidence produced by the complaint proves that a payment has in fact been made to provide water connections for the 94 persons or any of them listed in the document produced marked P.09 by the 1st respondent at the trial.

11. According to the evidence called for, on behalf of the petitioner, Manjula Gajanayake, the National Coordinator of the Centre for Monitoring Election Violence (CMEV) has given evidence regarding the above allegation. According to his testimony, on 22.01.2018, the United National Party (UNP) has complained that the 1st respondent bribes the voters by distributing money and goods to them in this manner. Accordingly, having inquired into the matter through his representatives, the Chairman of the Election Commission was informed of it by a letter dated 30.01.2018 which is produced marked P.02.

The witness further stated that a special inquiry into the complaint which he made to the Elections Commission was conducted by a special investigation officer of the Elections Commission. The witness

further stated that he had seen the investigation report. Accordingly, the report prepared by H.A. S. Fernando , Coordinator of the National Election Complaints Center on 03.02.2018 regarding that complaint was produced Marked P. 03

12. Hettiyakandage Aruna Pushpa Saumyasiri Fernando, an officer of the Sri Lanka Administrative Service who has prepared the above report marked P.03 has given evidence before the court. In his evidence, he admitted that the document marked P. 03 is a document prepared by him. Accordingly, this officer has given evidence on the facts revealed during his investigation. The witness is an officer of the Sri Lanka Administrative Service and has served as an officer appointed as a coordinator attached to the National Election Complaints Centre on a temporary basis. Accordingly, this officer has conducted the investigation in his capacity as a government official. Therefore, the facts revealed by him are very important and can be considered as independent evidence.

13. According to the testimony of this witness ,and as revealed by the P.03 document and the investigation made in regard to the complaint of Centre for Monitoring Election Violence (CMEV) , it is revealed that a payment had been made to the Bank of Ceylon, Monaragala on 28.11.2017, in the name of several individuals separately, to provide new water connections for them .The testimony of this witness clearly reveals that the payment in respect of 20-30 persons have been made by a person having the same national identity card and a telephone number. Accordingly, the witness testified that all deposit slips of payment to the Bank carried the NID number 812811401 V and telephone number 071 2455117 belonged to one person who has made the payment. He further stated that he, with the assistance of the police met the Manager of the Bank of Ceylon, Monaragala and inquired about the deposit slips and obtained the relevant information, and was able to ascertain the identity of the person who has deposited money as Siriyaratne Anura Shantha Kumara, a person residing at No. 1/85, Maduruketiya Grama Niladhari Division, 131B, Monaragala.

14. The witness has further stated that he had inquired about this person and found that he was a government servant attached to the office of the District Medical Officer. Later he has made arrangements to record his statement and it is clearly mentioned in the document marked P.03.

Moreover, the P.03 document clearly indicates that, in addition to above, he has received a complaint to the effect that this person was participating in the election campaign of the candidate Tharanga Dissanayake. Accordingly, this witness has made the following observations in the P. 03 report.

“As stated in Para 06 of the complaint made by CMEV against the candidate Tharanga Dissanayake is confirmed to have been involved in a murder charge. As such, fears exhibited by all informants seem justified; Even now, it is observed that he is engaged in distributing money and goods to the people of his area in various ways”.

“It is also confirmed that a person named Anura Shantha Kumara, a public servant, has assisted in the distribution of money and the goods. It is also learnt that , this person , while recording a statement by the Monaragala Police regarding the complaint of CMEV, has stated that he had paid the money of Tharanga Dissanayake to provide water supply connections on 28.11.2017, but no payment has been made on 20.01.2018. ”

15. The documents relevant to the facts stated by the above witness, namely the Coordinator of the National Election Complaints Center have been produced to the Court by the petitioner at the time of giving evidence. Those documents are marked P. 09; they have been obtained from the Water Supply and Drainage Board, Monaragala District Office under the Freedom of Information Act .Dissanayake Mudiyansele Chandani Shyamali Damayanthi Bandara, Civil Engineer, Monaragala Regional Office, National Water Supply and Drainage Board, testifying on behalf of the petitioner has confirmed that those documents were issued by the Monaragala District Office of the National Water Supply and Drainage Board. Accordingly, the documents submitted marked P.09 include the photocopies of the cash deposit slips of the Bank of Ceylon pertaining to the cash vouchers of 94 persons who had obtained new water connections . Examination of these documents reveals the following.

i. According to the first summary of the document marked P.09, persons listed in it from 01 - 28, 30 - 32, 35, 70, 85, 89 have paid the money to the Bank of Ceylon on the same day to obtain their new water supply connections. That was on 28.11.2017.

- ii. The person whose name appears at 33rd. place has paid the money on 2017.11.25.
- iii. The person whose name appears at 29th place has paid the money on 2017.11.15.
- iv. . The persons whose names appear at 34 - 69, 71 - 75, 77, 79 - 84, 87 and 91 - 93 have paid on 06.12.2017.
- v. The persons whose names appear at 76, 78,86 have paid money on 2018 .01.06.
- vi. The persons whose names appear at 90, 94, have paid money on 2017 .12.22.
- vii. The examination of cash deposit slips pertaining to the payment made to the Bank of Ceylon on 17.11.28, it appears that all those deposit slips have common characteristics i.e. , the National Identity Card number of the person who had made payment in respect of all those documents bear the number 812811401 V while the telephone number of the person who has made the payment has been 0712455117. Accordingly, special attention has to be made on the fact that a large number of people who wished to have obtained new water connections have paid the money required for it at the same time while the money deposit slips contain the National Identity Card number and telephone number of the same person.
- viii. Further, a close scrutiny of the relevant deposit slips dated 28.11.2017 indicate the time of payment which is between 12.51 -1.25 pm

16. The fact that the payment in respect of 35 different individuals to provide new water connections has been made to the Bank of Ceylon, by 35 individual deposit slips within the same time period , and the ID number and the telephone number of the person appearing in the deposit slips being the same, clearly indicate that all the payments have been made by one person at the same time. Further, it has also been confirmed that Siriyaratne Anura Shantha Kumara is the person who has paid the money. The said Siriyaratne Anura Shantha Kumara has given evidence in this case and in his testimony he admitted that the identity card number and telephone number indicated in the deposit slips were his. However, he did not admit in his testimony that he had made the payment specifically, but admitted that all the relevant deposit

slips do contain his identity card number and telephone number. The conclusion that this court could reach from this is that all these payments have been made by this person. Otherwise, there is no way that his name and telephone number will appear in all deposit slips. Also, looking at the time at which the money has been paid, i.e between 12.51 -1. 25 pm and the witness being a government servant has no capacity to be present at the Bank of Ceylon at this time. Accordingly, it is clear that he has come to the Bank specifically for the purpose of making these payments.

17. This witness, in the course of his testimony in this court admitted that he has participated in political activities of Tharanga Dissanayake, the 1st respondent of this case. He has also stated that he used to go to the Bank to deposit money of the father of Tharanga Dissanayake as well. But he did not give definite answers to the questions posed to him as to how his National Identity Card number and the Telephone Number had come to be written in the deposit slips pertain to the documents marked P.09. This witness is an ordinary government servant and there is no reason for him to pay huge sums of money on behalf of other people in this manner. Similarly, there is no need for him to mention his name and National Identity Card number in said deposit slips. Accordingly, it is clear that he had deposited the money in this manner on behalf of another person.

18. Examination of documents pertaining to P.09 shows that approximately Rs. 20,000 / - has been paid in respect of each person to obtain new water connections. Several persons whose names appear in the vouchers pertaining to giving water connections were summoned to give evidence on behalf of the petitioner regarding the payments. But, all the witnesses claimed that it was their money that they used for this. They stated that they had obtained a bank loan to procure the money. However, all these witnesses seem to be giving evidence concealing the true facts. In particular, the police have conducted an investigation into the complaint in which it appears that the witnesses had made statements to the police, as per the copies of the excerpts of those statements filed by the HQI Monaragala with reference to this case on 17.10.2019 on a Court order. Scrutiny of their evidence shows that all these witnesses have given evidence in Court contradicting what they have stated to the police. All the witnesses summoned by the petitioner to give evidence in regard to P.09 deny that the 01st respondent in this case has paid money for them to obtain water connections or they have made such a statement to that effect to the

police either. Accordingly, when these witnesses were summoned to give evidence, the court allowed the witnesses who were called on behalf of the petitioner to be questioned in the form of cross-examining them. In this process, the contradictions arose between the statements they have made to the police and the evidence given in Court has been brought to the attention of the Court.

19. In particular, if the names of these witnesses were to be mentioned they are as follows: Subramanian Chandrakumari, Selvarasa Wasantha Kumari, Karimuttu Saravanakumari, Sinharasu Yoganayagi, and Virayya Kokila Pushparaj Gopal Krishnan. Although, giving evidence in open court, they have denied that they had taken money from Tharanga Dissanayake or anyone else to obtain relevant water connections, the analysis of their evidence reveals that they have not gone to the bank themselves and deposited money. Some witnesses do not even claim to have deposited money in the bank. They claim that they have deposited money with the Water Board. Also some witnesses have failed to specify the amount of money they claim to have deposited. Accordingly, it is very clear that these witnesses were concealing certain facts while giving evidence in Court.

20. It seems quite natural for these witnesses to give evidence in this manner. It will be a great help for these people living in rural areas if someone offers them a sum of about RS 20000 / - to obtain a water connection. Also, these persons cannot be expected to give evidence that might be detrimental to the person who has helped them. Moreover, if these witnesses had in fact obtained such money from an election candidate, it would amount to an offense committed by them as well; as such a person with a sense of guilt that he has committed an offense cannot be expected to tell the truth. However, in examining the documents produced, the contents of the documents, the time of deposit and the manner in which it has taken place; it is evident that the persons mentioned in the document marked P. 09 were not the ones who had paid for new water connection. Especially when considering the date 28.11.2017, and careful study of documents pertaining to that date, it is very clear that the payment relevant to those documents have been made by Anura Shantha Kumara and not by the persons mentioned in those documents.

21. Accordingly, the review of the documents marked P.09, it is clear that it was Anura Shantha Kumara who had paid for the new water connections on 28.11.2017, on behalf of the persons mentioned in those

documents. So much so, it is relevant to see whether Anura Shantha Kumara has a need to pay for other people in this manner. Anura Shantha Kumara is an ordinary public servant and it is very clear that he has no need or ability to pay for other people for their water connections. This he has admitted in his testimony and answered the question asked in this regard as follows.

Q. Do you have financial strength to spend your personal wealth for an election campaign?

A. No, not at all¹.

Accordingly, it seems that Anura St. Kumara does not have the ability or the need to donate his wealth in this way to obtain new water connections for the people in the village. So, this implies that Anura Shantha Kumara has deposited this money on behalf of another person

22. The relationship between Anura Shantha Kumara and the 1st respondent of this case as well as how the former has contributed to the election campaign of the 1st respondent is evident from the testimony of Anura Shantha Kumara himself. Anura Shantha Kumara has admitted that he and Tharanga Dissanayake, the 1st respondent appear in the photographs marked P.19, P.20, and P. 21 when they were shown to him while he was giving evidence. Examination of the documents marked P.19, P. 20 and P. 21 clearly shows that those photographs had been taken during the election campaign. Accordingly, it is very clear that Anura Shantha Kumara had participated in the election campaign of the 1st respondent of this case which he has admitted in his testimony. Accordingly, Shantha Kumara has answered some of the questions posed to him, as follows.

Q. Have you helped anyone in the election?

. A. I haven't made any special help as such. I believe that politically I may have got involved myself in the election activities

Q. What type of activities are they?

A. like the distribution of program leaflets.

Q. Then, these photographs include instances where you help Mr. Tharanga Dissanayake?

¹Page 08- evidence Notes commenced at 12.00 noon on 10.09.2020

A. Yes²

Further, Anura Shantha Kumara has admitted that he has participated in distributing propaganda leaflets of the 1st respondent in his political campaign; the witness admitted that the document marked as P.10 was a leaflet distributed by Tharanga Dissanayake for his election campaign. The witness also admitted in his testimony that he involved himself with Tharanga Dissanayake in distributing goods to sports clubs. This has been stated in the testimony as follows.

Q: Then, have you been involved in distributing sports goods?

Q. I was involved only once in distributing sport goods.

Q. Sir, to which sports club were those items distributed?

A. The location, I do not remember exactly³.

23. Thus, it is very clear that Anura Shantha Kumara is one who has participated in the political propaganda campaign of Tharanga Dissanayake, the 1st respondent and he is also a follower of him.

24. The document marked P.10 is a campaign leaflet requesting the people to vote for Tharanga Dissanayake, the candidate of the Sri Lanka Podujana Peramuna who contested the Maduraketiya Ward of Monaragala Pradeshiya Sabah during the local government elections held on 10.02.2018. The 01st respondent has never denied that this campaign leaflet is one that has been distributed on behalf of Tharanga Dissanayake. Witness Anura Shantha Kumara also has identified this leaflet. The section marked P. 10 of this leaflet reads as follows.

“Provision of drinking water facilities at a cost of Rs. 7 million to innocent people of Maduruketiya who do not have even a drop of water”

Where the above excerpt appears in the leaflet, there is a picture of Tharanga Dissanayake, the 1st respondent, handing over a document to another person. According to this leaflet, Tharanga Dissanayake during his election campaign, has stated that he has provided drinking water facilities to the people of Maduruketiya at a cost of Rs. 7,000,000. In the course of hearing of evidence in this case, it has never been mentioned that Tharanga Dissanayake had implemented a separate water project or

² Page 07 of Evidence Notes commencing at 12.00 noon on 30-20.09.30

³

that he had launched a separate water project at his expense to provide drinking water facilities for the people of Maduruketiya. Also, there is no such fact being disclosed on behalf of the 1st respondent either. Accordingly, the reference made in the leaflet in regard to the provision of water facilities to the people of Maduruketiya at a very high cost only tallies with the alleged payments made for providing new water connections to the people whose names appear in the documents marked as P.09. And it is very clear that the payment has been made on behalf of the persons whose names appear in the document marked P.09. If approximately Rs. 20,000 / - per head is spent for 94 people, the total will amount to a huge sum of money. Thus, if someone undertakes to pay for new water connections on behalf of the other people, it can be interpreted as providing drinking water facilities to those people, the people of Maduruketiya.

25. Accordingly, the fact that Anura Shantha Kumara being the person who had paid the money to the Bank of Ceylon as per documents marked P.09 (especially the document dated 28.11.2017) ; Anura Shantha Kumara joining the election campaign activities of the 01st respondent maintaining a close relationship with him; and also his admittance of paying of money for new water connections in some way through the document marked P.10, are interrelated; Accordingly, the combination of these facts could lead to only one conclusion i.e it was the 01st respondent in this case who had paid money on behalf of the persons mentioned in the documents marked P. 09, to provide new water connections for them. The document marked P.10 reflects that the 01st respondent has paid the money for water connections and used it for his election campaign. Accordingly, I determine that the above evidence presented on behalf of the petitioner confirms that the 1st respondent has provided new water connections to many people in Maduraketiya area with his own money with the intention of securing the votes of the people of the area in his favour.

26. It is also evident from the testimony of the 88th respondent that there had been several complaints against the 1st respondent that he, as an election candidate distributing various goods and money. The 88th respondent was the officer who had served on 10.02.2018 as the Assistant Commissioner of Elections in Monaragala during the period when the Local Government Elections was held. Accordingly, the 88th respondent has given evidence regarding the complaints received against the 1st respondent and the action taken on those complaints. The complaints on illegal activities alleged to have been committed by the 1st

respondent during the election period are recorded in the documents marked at the time of giving evidence.

They are as follows.

i. Document R88 (1) a, pertains to a complaint lodged on 20.01.2018; it states that the 01st respondent was distributing cement in a three wheeler for the promotion of his candidacy.

ii. A Complaint recorded in the document marked R88 (2) a, has been received on 18.01.2018; it states that the 01st respondent has prepared parcels of good for distribution among the public and they were being distributed in a van, and also was engaged in election promotion activities by giving money to people, going from house to house

iii. R88 (3) a: is a complaint received on 19.01.2018 stating that the 1st respondent was distributing building materials, and cash for obtaining water and arrack; the complaint further records that he has got down dairy cattle for distribution.

iv. The complaint recorded in the document marked R88 (4) a- has been received on 20.01.2018. The complaint alleged that the 1st respondent was providing unlimited money, goods and services to the voters during the election period.

v. The complaint marked as R88 (5) a, has been made by Manjula Gajanayake, National Coordinator, Center for Election Violence Monitoring (CEVM). It states that the 1st respondent was offering bribes to voters and entertaining them in violation of the election laws in order to promote his candidature.

vi. Complaint marked R88 (6) a- has been made on 09.02.2018; It is a complaint made by The PAFFREL. According to the complaint, the 1st respondent has engaged in offering bribes and goods to the voters.

vii. The document marked R88 (7) a, which has been received on 09.02.2018, states that the 01st respondent was engaged in distributing goods to the voters.

The steps taken and investigations carried out by the Assistant Commissioner of Elections in regard to the above complaints have been revealed in the Documents marked R88 (1) b, R88 (2) b, R88 (5) b, R88 (6) b, R88 (7) b, respectively. It is clear from the examination of the records that the Commissioner of Elections has not conducted a

comprehensive inquiry into the complaints made against the 01st respondent and also the officers who have monitored the complaints have been very lenient in dealing with them.

Of the complaints received against the 01st respondent, It appears that a comprehensive investigation has been conducted in respect of the complaint marked R88 (5) a. It was a complaint made by Manjula Gajanayake who had given evidence in this case; the reason for the complaint has been the payments made for new water connections mentioned elsewhere in this order. The 88th respondent has admitted that Hettiyakandage Aruna Pushpa Saumyasiri Fernando who has given evidence in this case has conducted an investigation in this regard. Accordingly, the 88th respondent has admitted that the report produced by the said officer in this regard is the report marked P.3 for this case. In addition, the 88th respondent has stated in his testimony that the police too, has conducted an investigation into the complaint.

27. The extracts of the report of investigation into the complaint conducted by the police have been produced and filed into this case by the HQI of Monaragala Police station on the orders of the Court. According to that extracts file, the case number BR66 / 2018 has been filed in the Monaragala Magistrate's Court in this regard. A letter sent to the Attorney General, signed by the HQI is attached at the end of the extracts file .According to that letter the HQI has informed the Hon. Attorney General as follows:

“Referring to the extracts file, I seek your kind advice whether this matter could be referred to the Hon. Attorney General to explore the possibility of arresting Dissanayake Mudiyanseelage Tharanga Harshana Priya Prasad Dissanayake and prosecute him depending on the nature of the above offense; the above report and 02 extracts files are sent to you”.

The report further states that it reveals that Dissanayake Mudiyanseelage Tharanga Harshana Priya Prasad, the candidate of Sri Lanka Podujana Peramuna (People's Front) whose name appears in the said report , has committed the offense of bribery in connection with the local government election held on 10.02.2018. Accordingly, it is clear that this letter has been submitted as the approval of the Attorney General is required to file a case under Section 82 (e) (3) of the Local Government Elections Ordinance

Accordingly, as mentioned in that letter, the HQI has stated that consequent to the investigation carried out in regard to the complaint, he has determined that the payment of money to provide water facilities for 96 persons and electricity connections for 09 persons during the election season, falls within the category of offense described as 'bribery' in the section 82 (d) of the Local Government Elections Ordinance. However, it appears that the HQI has neglected his duties to a certain extent; that means, as stated in the letter, the HQI is empowered to arrest a person committing an offense; in this case it was the 1st respondent, provided there is evidence that the offense has been committed by him. Section 82 (e) (3) of the Ordinance stipulates that the approval of the Attorney General must be obtained only for prosecution. However, on this instance, the HQI has not arrested the 1st respondent or any other person and sought the approval of the Attorney General for the same.

28. The forgoing facts and the investigations carried out by the police, as stated earlier in this order, clearly prove that the 01st respondent, in his capacity as an election candidate, has paid money to provide new water facilities for the people of Maduruketiya area with the object of securing their votes. Accordingly, I determine that in the course of this trial on the election petition, the 01st respondent in this case has been found to have committed the act of corruption known as 'bribery' as described in Section 82 (d) of the Local Government Elections Ordinance, which is punishable under Section 82 (e) of the Local Government Elections Ordinance.

29. Section 82 (P) of the Local Government Elections Ordinance provides for the grounds on which an election in respect of any ward of any electoral area or election of a Councilor of a Local Government Institution shall be declared void on an election petition. Article (P) 1 specifies the grounds on which an election can be declared void on a petition. In the trial of this case, as there was no revelation of the commitment of acts of general bribery, general treating or general intimidation or other misconduct or many other offenses generally committed by many candidates that lead to declaring an election void; as such based on the findings of this case, I determine that there are no enough grounds to declare the entire election held for the Maduruketiya ward, null and void.

However, I determine that the 1st respondent, the candidate who won the election held for Maduruketiya Ward is found guilty of

committing acts of corruption particularly the act of corruption known as 'bribery' as mentioned in Article 82 (P) (2) of the Ordinance in relation to the election. Accordingly, I am determined to issue an order in terms of Section 82 (P) (2) in regard to this trial.

30. Further, I determine that the argument put forward in the written submissions produced on behalf of the 01st respondent, that when the offense of bribery is committed involving only a certain number of persons, only the vote of that number of persons involved in the act of bribery should be abolished; i.e. the probable increase in the number of votes due to the act of bribery should be deducted from the total votes polled and compare the majority vote polled for the candidate ignoring the number of votes so deducted, and the decision to declare whether the election is void to be based on that, is baseless.

The reason for this is as follows. According to Section 82 (e) of the Local Government Elections Ordinance, if a candidate convicted for an offense related to bribery happens to be a Councilor elected for a local government body his election shall be rendered void from the date of his conviction. This is clearly stated in Article 82 (e) (2) of the Local Government Elections Ordinance. Accordingly, it is not possible to determine the election of a person in proportion to the extent of the bribe and the number of majority votes polled because it is clearly stated that the election of a person shall become void if he is found guilty of a corrupt practice irrespective of the nature and the extent of the act of bribery committed. It is clearly evident that the purpose of the Local Government Elections Ordinance is to make void the election of a Councilor no sooner than he has been found guilty of committing an offense relating to bribery.

31. Based on all the facts indicated above, and the facts revealed and proved at the hearing of this case conducted under the Local Government Elections Ordinance, and in accordance with the evidence produced against the 01st respondent of this case, the corrupt act of bribery as specified in the Local Government Elections Ordinance, has been committed by an agent of the 1st respondent with the consensus and knowledge of the former, during the election held for Maduraketiya Ward of the Monaragala Pradeshiya Sabha; accordingly, in terms of Section 82 (P) (2) of the Ordinance, I determine that the charge of corruption against the 01st respondent has been proved to my satisfaction as the Election Judge. Based on that, I determine that the facts (allegations) have been proved adequately to declare the election

of the 1st respondent as a Counselor of the Monaragala Pradeshiya Sabha, null and void.

32. Accordingly, in terms of Section 82 (n) of the Local Government Elections Ordinance, I make the following order: I determine and declare that the election of Dissanayake Mudiyansele Tharanga Harshaka Priya Prasad Dissanayake, the 01st respondent of this case who contested the Maduruketiya Ward from the political party known as the Podujana Peramuna at the election held on 10.10.2018 to elect the Councilors of the Monaragala Pradeshiya Sabha and was elected as a Councilor of the Monaragala Pradeshiya Sabha with the highest number of votes shall be void.

Also, consequent of the above verdict, as the election of the 01st respondent who has secured the highest number of votes from Maduruketiya Ward is rendered void, I determine that the candidate of the United National Party who has secured the second highest number of votes at the polls as per the document marked P.02, should be the next person to be appointed to fill the vacant position. Accordingly, I declare that Wanasinha Mudiyansele Sunil Shantha Wanasinha, the petitioner of this case shall be the legally elected Councilor of the Maduruketiya Ward of the Monaragala Pradeshiya Sabha.

I certify in writing the determination made in terms of Section 82 (W) above, and also to prepare the certificate separately and place it in the custody of the Registrar of the High Court.

Also, I undertake to prepare a separate record of the report that I have compiled in terms of Section 82 (p) of the Local Government Elections Ordinance and place it in the custody of the Registrar of the High Court.

R. S. A. Dissanayake

Additional High Court Judge - Monaragala

2021.09.13

Certified that the above is a true copy of the order dated 13.09.2021 of the Case of Mo / Mahadhi / Case No: 01-2018 Election Petitions.

Prepared by: -

Checked: -

Sign & Seal

Registrar, Uva Provincial High Court,
Monaragala.