

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

In the matter of an application in terms of Article 17 and Article 126 read with Articles 35 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC. FR Application No. 351/2018

Rajavarothiam Sampanthan

176, Customs Road,

Trincomalee

**Petitioner**

Vs.

1. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.
2. Mahinda Deshapriya  
Chairman
3. N J Abeysekera PC  
Member
4. Prof. Rathnajeewan Hoole  
Member  
All of Election Commission,  
Election Secretariat  
Sarana Mawataha, Rajagiriya

**Respondents**

AND

1. Prof. Gamini Lakshman Pieris  
No.37, Kirula Place,  
Colombo 5.

2. Udaya Prabath Gammanpilla  
65/14G, Wickramasinghe Mawatha,  
Kumaragewatta Road, Pelwatta,  
Battaramulla
3. Wellawattage Jagath Sisira Sena de  
Silva  
No.174/10, Uthuwankanda Road,  
Thalawathugoda
4. Mallika Arachchige Channa Sudath  
Jayasumana.  
  
21/1A,Upananda Road, Attidiya.
5. Premanath Chaminda Dolawatta  
  
No.50, Ihala Bomiriy, Kaduwela.

### **Added Respondents**

Before : Nalin Perera Chief Justice  
B.P. Aluvihare PC J  
Sisira J de Abrew J  
Priyantha Jayawardene PC J  
Prasanna Jayawardene PC J  
V.K. Malalgoda PC J  
Murdu Fernando PC J

Counsel : K. Kanag Iswaran PC with M.A. Sumanthiran PC, Niran Ankettal  
E Tegal, J Arulanandhan, JC Thambiah, Niranjan Arulpragasam  
for the Petitioner  
Jayantha Jayasuriya PC, Attorney General with  
Dappula de Livera Solicitor General, Sanjay Rajarathnam PC, ASG  
Nerin Pulle DSG for the Attorney General's Department.  
Hejaaz Hizbullah for the 4<sup>th</sup> Respondent.  
Sanjeeva Jayawardena PC for the 1<sup>st</sup> Added Respondent

Manohara de Silva PC for the 2<sup>nd</sup> Added Respondent  
Ali Sabri PC for the 3<sup>rd</sup> Added Respondent  
Gamini Marapana PC for the 4<sup>th</sup> Added Respondent  
Canishka Vitharana for the 5<sup>th</sup> Added Respondent  
Chrishmal Warnasuriya, Samantha Ratwatte PC, Shavinda Fernando  
Kushan de Alwis PC, Darshan Weerasekara, K Deekiriwewa  
Gomin Dayasiri and V.K. Choksy Canishka Witharana  
for several Interventient Petitioners

Argued on : 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> December 2018

Decided on : 13.12.2018

Sisira J de Abrew

Learned counsel for parties mentioned above made submissions. In addition to the submissions made by counsel for parties referred to above, the following counsel made submissions.

Thilak Marapana PC in SC FR 352/2018 for the Petitioner.

Viran Corea in 353/2018 for the Petitioner.

Dr. Jayampathi Wickramaratne PC in 354/2018 for the Petitioner.

M.A. Sumanthiran PC in 355/2018 for the Petitioner.

J.C. Waliamuna PC in 356/2018 for the Petitioner.

Geoffrey Alagaratnam PC in 358/2018 for the Petitioner.

Suren Fernando in 359/2018 for the Petitioner.

Ikram Mohamad PC in 360/2018 for the Petitioner.

Hejaaz Hisbullah in 361/2018 for the Petitioner.

His Excellency the President of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the President of the Republic) has, by a Proclamation published in Gazette No.2096/70 dated 09.11.2018 dissolved Parliament with effect from midnight on 09.11.2018. The petitioner who is a Member of Parliament whilst challenging the said Proclamation inter alia seeks the following reliefs from this court.

1. To declare that the Proclamation dissolving Parliament infringes his fundamental rights guaranteed by Article 12(1) of the Constitution.
2. To make order declaring that the said Proclamation dissolving Parliament is null and void ab initio and of no force or effect in law.
3. To quash the said Proclamation dissolving Parliament.
4. To quash the decisions and or directions contained in paragraphs (a),(b),(c) and (d) of the said Proclamation.

This court by its order dated 13.11.2018, granted leave to proceed for alleged violation of Article 12 (1) of the Constitution.

The learned Attorney General whilst submitting the following grounds contended that the Supreme Court is precluded from exercising the jurisdiction in respect of the alleged violation of the Petitioner's fundamental rights and from granting the reliefs sought by the Petitioner.

1. A specific mechanism is provided in Article 38(2) of the Constitution for the Supreme Court to exercise jurisdiction over allegation of intentional violations of the Constitution, misconduct or abuse of power by the President of the Republic.
2. The dissolution of Parliament by the President of the Republic does not constitute Executive or Administrative action falling within the purview of Article 126 of the Constitution.

I now advert to the above contentions.

When Article 38 (2) of the Constitution is examined, it is clear that the mechanism provided in Article 38 (2) of the Constitution is only available to the Members of Parliament. This mechanism is not available to the other citizens of the country. In fact there are several petitions filed in this court seeking to quash the Proclamation dissolving Parliament. The said petitioners are not Members of Parliament. For the above reasons, I reject the above contention advanced by the learned Attorney General. I now advert to the 2<sup>nd</sup> contention advanced by the learned Attorney General. He contended that the dissolution of Parliament by the President of the Republic does not constitute Executive or Administrative action falling within the purview of Article 126 of the Constitution. The general power given to the President of the Republic is contained in Article 33(2)(c) of the Constitution. The same power is contained in Article 70 of the Constitution with a procedure governing the exercise of the said power. Article 33 is found in Chapter VII of the Constitution. The Chapter VII of the Constitution deals with 'Executive' and the President of the Republic'. Therefore it can be safely concluded that the power of the President of the Republic to dissolve Parliament is an executive action of the President of the Republic. This view is supported by the judicial decision in the case of *In Re The Nineteenth Amendment to the Constitution* [2002] 3 SLR 85 (a judgment by seven Judges of this court) wherein His Lordship S.N.Silva CJ at page 103 and 104 held as follows:

“We have stated clearly, on the basis of a comprehensive process of reasoning, that **the dissolution of Parliament is a component of the executive power of the People, attributed to the President**, to be exercised in trust for the People and that it cannot be alienated in the sense of being transferred, relinquished or removed from where it lies in terms of Article 70 (1) of the Constitution.” (emphasis added).

At this stage I would like to consider Article 4 (b) of the Constitution which reads as follows:

Article 4(b) of the Constitution reads as follows.

“The Sovereignty of the People shall be exercised and enjoyed in the following manner :—

(a) omitted

(b) the executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People ;

(c) omitted

(d) omitted

(e) omitted”

Therefore it can be contended that official acts of the President of the Republic are executive actions. This view is supported by the passage in page 29 of the Book titled ‘Fundamental Rights and the Constitution’ by R.K.W. Goonesekere, wherein the learned Author states thus: “Official acts of the President are executive actions.... .” The contention that official acts of the President of the Republic are executive actions is also supported by the judicial decision in the case of *Karunathilake and Another Vs Dayananda Dissanayke Commissioner of Elections and Others* [1999] 1SLR 157. In the said case the following facts were observed.

The period of office of the Central, Uva, North-Central, Western and Sabaragamuwa Provincial Councils came to an end in June, 1998. The Commissioner of Elections (the 1st respondent) fixed the nomination period in terms of section 10 of the Provincial Councils Elections Act, No. 2 of 1988. After the receipt of nominations which concluded on 15.07.1998 each returning officer fixed 28.8.98 as the date of the poll by a notice under section 22 (1) of the Act. The issue of postal ballot papers in terms of section 24 of the Act read with Regulation 10 of the second schedule to the Act was fixed for 4.8.98. But by telegram dated 3.8.98, the respective returning officers suspended the postal voting without adducing any reason therefore. The very next day on 4.8.98 the President issued a Proclamation under section 2 of the Public Security Ordinance (PSO) bringing the provisions of Part If of the Ordinance into operation throughout Sri Lanka and made an Emergency Regulation under section 5 which had the legal effect of cancelling the date of the poll. Thereafter, the 1st respondent took no steps to fix a fresh date for the poll in terms of

section 22 (6) of the Act, even after 28.8.98. In the meantime the term of office of the North-Western Provincial Council came to an end and the date of the poll for that Council was fixed for 25.1.99.

His Lordship GPS de Silva CJ held as follows.

The making of the Proclamation and the Regulation as well as the conduct of the respondents in relation to the five elections, clearly constitute 'executive action' and the court would ordinarily have jurisdiction under Article 126 of the Constitution.

When I consider all the above matters, I hold that the power of the President of the Republic to dissolve Parliament is an executive action. I therefore reject the contention of the learned Attorney General that is to say that the dissolution of Parliament by the President of the Republic does not constitute Executive or Administrative action falling within the purview of Article 126 of the Constitution.

Can any person challenge the actions performed by the President of the Republic in his official capacity in the Supreme Court? This question must be considered since the Petitioner challenges the actions performed by the President of the Republic to dissolve Parliament. In this connection I would like to consider Article 35 of the Constitution. Article 35(1) reads as follows:

*“While any person holds office as President of the Republic of Sri Lanka, no civil or criminal proceedings shall be instituted or continued against the President in respect of anything done or omitted to be done by the President, either in his official or private capacity.*

*Provided that nothing in this paragraph shall be read and construed as restricting the right of any person to make and application under Article 126 against the Attorney General, in respect of anything done or omitted to be done by the President in his official capacity.*

*Provided further that the Supreme Court shall have no jurisdiction to pronounce upon the exercise of the powers of the President under Article 33(2)(g).”*

According to Article 35(1) of the Constitution, the President of the Republic while holding office enjoys immunity from suit. But does it mean that the Supreme Court cannot examine the legality of actions performed by the President of the Republic? I now advert to this question. In terms of the 2<sup>nd</sup> proviso to Article 35(1) of the Constitution, the Supreme Court has no jurisdiction to pronounce upon the exercise of the powers of the President of the Republic performed under Article 33(2)(g) of the Constitution. This Article deals with the power of the President of the Republic to declare war and peace. The words *'anything done or omitted to be done by the President in his official capacity'* in the 1<sup>st</sup> proviso to Article 35(1) of the Constitution should be stressed. Thus when Article 35 of the Constitution is considered, it is clear that except the acts done by the President of the Republic in the exercise of his powers conferred by Article 33(2)(g) of the Constitution, the other acts of the President of the Republic are not immune from suit. It has to be stated here that that the President of the Republic is a creature by the Constitution. This view is supported by Article 30 of the Constitution which reads as follows:

*“30(1) - There shall be a President of the Republic of Sri Lanka, who is the head of the State, the head of the Executive and of the Government, and the Commander-in-Chief of the Armed Forces.*

*(2)- The President of the Republic shall be elected by the People and shall hold office for a term of five years.”*

It is the duty of the President of the Republic to respect and uphold the Constitution. This view is supported by Article 33(1) of the Constitution which reads as follows.

33.(1) It shall be the duty of the President to -

- (a) ensure that the Constitution is respected and upheld;
- (b) promote national reconciliation and integration;

- (c) ensure and facilitate the proper functioning of the Constitutional Council and the institutions referred to in Chapter VIIA; and
- (d) on the advice of the Election Commission, ensure the creation of proper conditions for the conduct of free and fair elections and referenda.

The President of the Republic in terms of Article 32 of the Constitution must take an oath stating that he would uphold and defend the Constitution. Therefore it is seen that the President of the Republic is subject to the Constitution. In *Mallikaarchchi Vs Shivapasupathi, Attorney General* [1985] 1 SLR 74 wherein Sharvananda CJ at page 78 held thus: “the President is not above the law.”

I have earlier held that the acts of the President of the Republic except the acts done in the exercise of his powers conferred by Article 33(2)(g) of the Constitution are not immune from suit. In this connection, I would like to consider the judicial decision in *Karunatileke and Another Vs Dayananda Dissanayake Commissioner of Elections and Others* (supra) wherein this Court at page 177 held as follows:

“I hold that Article 35 only prohibits the institution (or continuation) of legal proceedings against the President while in office; it imposes no bar whatsoever on proceedings (a) against him when he is no longer in office, and (b) other persons at any time. That is a consequence of the very nature of immunity: immunity is a shield for the doer, not for the act. Very different language is used when it is intended to exclude legal proceedings which seek to impugn the act. Article 35, therefore, neither transforms an unlawful act into a lawful one, nor renders it one which shall not be questioned in any Court. It does not exclude judicial review of the lawfulness or propriety of an impugned act or omission, in appropriate proceedings against some other person who does not enjoy immunity from suit ..”

For the above reasons I hold that this court has the power to examine legality of the impugned acts or omissions by the President of the Republic except the acts done by him in the exercise of powers conferred to him by Article 33(2)(g) of the Constitution.

For the above reasons, I hold that this court has jurisdiction to inquire into the legality and correctness of the Proclamation issued by the President of the

Republic dated 09.11.2018 published in Government Gazette No.2096/70 dated 09.11.2018 dissolving Parliament. I further hold that acts of the President of the Republic in issuing the said Proclamation and the said Proclamation are subject to the judicial review of this court and do not come under immunity stated in Article 35 of the Constitution.

Learned President's Counsel for the 1<sup>st</sup> added Respondent Mr. Sanjeewa Jayawardena drawing our attention to both Sinhala and English versions of Article 62 of the Constitution, contended that the President of the Republic under Article 62(2) of the Constitution has the power to dissolve Parliament at any time. I now advert to this contention. If this contention is accepted as correct, the moment the notice of resolution discussed in Article 38(2) of the Constitution is handed over to the Hon. Speaker of Parliament, the President of the Republic can dissolve Parliament. If it happens, no resolution discussed in in Article 38(2) of the Constitution can be passed by Parliament. Thus if the above contention is accepted as correct, Article 38(2) of the Constitution would be rendered nugatory. Sinhala version of Article 62(2) of the Constitution contains three sentences. But the English version of the said Article contains one sentence. The second sentence of the Sinhala version of the said Article is to the following effect. "However Parliament can be dissolved before the expiry of its fixed term." According to Article 62(2) of the Constitution, fixed term of Parliament is a period of five years. Article 62(2) of the Constitution deals with the dissolution of Parliament at the end of term of five years from the date appointed for its first meeting. It is an automatic dissolution. Since it is an automatic dissolution, there is no necessity for the President of the Republic to issue a Proclamation. Article 62(2) of the Constitution (English version) reads as follows:

*“Unless Parliament is sooner dissolved, every Parliament shall continue for five years from the date appointed for its first meeting and no longer, and the expiry of the said period of five years shall operate as dissolution of Parliament.”*

This Article discusses a dissolution called “sooner dissolution of Parliament”. What is “sooner dissolution of Parliament”? It is discussed in Proviso to Article 70(1) of the Constitution. Article 70(1) of the Constitution reads as follows:

*“The President may by Proclamation, summon, prorogue and dissolve Parliament:*

*Provided that the President shall not dissolve Parliament until the expiration of a period of not less than four years and six months from the date appointed for its first meeting, unless Parliament requests the President to do so by a resolution passed by not less than two-thirds of the whole number of Members (including those not present), voting in its favour.”*

According to Article 70(1) of the Constitution, there are only two ways in which Parliament can be sooner dissolved. They are as follows:

1. At the expiration of a period of not less than four years and six months from the date appointed for its first meeting.
2. When the Parliament by a resolution passed by not less than two-thirds of the whole number of Members (including those not present) requests the President of the Republic to dissolve Parliament.

These are the two ways in which Parliament can be sooner dissolved. Thus it is seen that sooner dissolution of Parliament discussed in Article 62(2) of the Constitution is the dissolution that is discussed in Article 70(1) of the Constitution. For the above reasons, I hold that the President of the Republic has no power to dissolve parliament under and in terms of Article 62(2) of the Constitution.

Learned President's Counsel for the 1<sup>st</sup> Added Respondent Mr.Sanjeewa Jayawardena drawing our attention to Article 70(5)(b) of the Constitution further contended that the President of the Republic has the power to dissolve Parliament under Article 62(2) of the Constitution. Article 70(5)(b) of the Constitution reads as follows.

*“Upon the dissolution of Parliament by virtue of the provisions of paragraph (2) of Article 62, the President shall forthwith by Proclamation fix a date or dates for the election of Members of Parliament and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation.”*

As I pointed out earlier, the dissolution of Parliament discussed in Article 62(2) of the Constitution is an automatic dissolution unless Parliament is sooner dissolved. I have earlier held that sooner dissolution of Parliament discussed in Article 62(2) of the Constitution is the dissolution that is discussed in Article 70(1) of the Constitution. Further the Proclamation discussed in Article 70(5)(b) of the Constitution is not a Proclamation dissolving Parliament. It is a Proclamation fixing a date for the election of Members of Parliament and summoning the new Parliament to meet. This Proclamation will be issued upon the automatic dissolution of Parliament. Considering all the above matters, I hold that Article 62(2) or 70(5)(b) of the Constitution does not give power to the President of the Republic to dissolve Parliament. For the above reasons, I reject the contention of learned President's Counsel for the 1<sup>st</sup> Added Respondent.

Can it be contended that President of the Republic, acting under Article 70(5)(a) of the Constitution, can dissolve Parliament? Does this Article confer any power to the President of the Republic to dissolve Parliament? Article 70(5)(a) of the Constitution reads as follows.

*“A Proclamation dissolving Parliament shall fix a date or dates for the election of Members of Parliament, and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation.”*

This Article does not give any power to the President of the Republic to dissolve Parliament. This Article states that certain particulars that should be stated, in the proclamation dissolving Parliament. They are:

1. Fixing a date or dates for the election of Members of Parliament.
2. Summoning the new Parliament to meet on a date not later than three months after the date of such Proclamation.

For the above reasons, I hold that Article 70(5)(a) of the Constitution does not confer any power to the President of the Republic to dissolve Parliament and that the President of the Republic cannot acting under 70(5)(a) of the Constitution dissolve Parliament.

It was contended on behalf of the Respondents that the President of the Republic, in terms of Article 33(2)(c) of the Constitution, could dissolve Parliament. However it was contended on behalf of the Petitioner that the President of the Republic without fulfilling the requirements stated in Article 70(1) of the Constitution, could not dissolve Parliament in the exercise of the powers conferred to him by Article 33(2)(c) of the Constitution. Can the President of the Republic acting under Article 33(2)(c) of the Constitution dissolve Parliament without fulfilling the requirements stated in Article 70(1) of the Constitution? This is one of the important questions that must be decided in this case. Article 33(2)(c) of the Constitution reads as follows.

*“In addition to the powers, duties and functions expressly conferred or imposed on, or assigned to the President by the Constitution or other written law, the President shall have the power –*

- (a) to make the Statement of Government Policy in Parliament at the commencement of each session of Parliament;*
- (b) to preside at ceremonial sittings of Parliament;*
- (c) to summon, prorogue and dissolve Parliament;*
- (d) to receive and recognize, and to appoint and accredit Ambassadors, High Commissioners, Plenipotentiaries and other diplomatic agents;*
- (e) to appoint as President’s Counsel, attorneys-at-law who have reached eminence in the profession and have maintained high standards of conduct and professional rectitude. Every President’s Counsel appointed under this paragraph shall be entitled to all such privileges as were hitherto enjoyed by Queen’s Counsel;*
- (f) to keep the Public Seal of the Republic, and to make and execute under the Public Seal, the acts of appointment of the Prime Minister and other Ministers of the Cabinet of Ministers, the Chief Justice and other judges of the Supreme Court, the President of the Court of Appeal and other judges of the Court of Appeal, and such grants and dispositions of lands and other immovable property vested in the Republic as the President is by law required or empowered to do, and to use the Public Seal for sealing all things whatsoever that shall pass that Seal;*
- (g) to declare war and peace; and*
- (h) to do all such acts and things, not inconsistent with the provisions of the Constitution or written law, as by international law, custom or usage the President is authorized or required to do.”*

For the purpose of clarity I will reproduce below the Article 70(1) of the Constitution.

*“The President may by Proclamation, summon, prorogue and dissolve Parliament:*

*Provided that the President shall not dissolve Parliament until the expiration of a period of not less than four years and six months from the date appointed for its first meeting, unless Parliament requests the President*

*to do so by a resolution passed by not less than two-thirds of the whole number of Members (including those not present), voting in its favour.”*

The 1<sup>st</sup> sentence of Article 70(1) of the Constitution which reads as follows ‘*the President may by Proclamation, summon, prorogue and dissolve Parliament*’ should be stressed. When this sentence is considered, it is seen that the power given to the President of the Republic to dissolve Parliament by Article 33(2)(c) of the Constitution is reproduced in Article 70(1) of the Constitution. When Article 70(1) of the Constitution states that ‘*provided that the President shall not dissolve Parliament ....*’ he (the President of the Republic) cannot and is not empowered to dissolve Parliament without the requirements set out in Article 70(1) being satisfied. What are those requirements?

1. There must be an expiration of a period of four years and six months of Parliament from the date appointed for its first meeting.
2. Parliament by a resolution passed by not less than two thirds of the whole number of Members (including those not present) must request the President of the Republic to dissolve Parliament. This requirement becomes necessary only when the President of the Republic intends to dissolve Parliament before expiration of a period of four years and six months of Parliament from the date appointed for its first meeting

Therefore I hold that in terms of Article 70(1) of the Constitution, the President of the Republic cannot, until the expiration of a period of four years and six months of Parliament from the date appointed for its first meeting, dissolve Parliament at his own will. In other words the President of the Republic cannot, at his own will, dissolve Parliament during the period of four years and six months of Parliament from the date appointed for its first meeting. If the President of the Republic wants to dissolve the Parliament during the said period of four years and six months,

there must be a resolution passed by two third majority of the Members of Parliament (including those not present) requesting the President of the Republic to dissolve Parliament. However the President of the Republic, at his own will, can dissolve Parliament under Article 70(1) of the Constitution after expiration of a period of four years and six months of Parliament from the date appointed for its first meeting. Article 33(2)(c) of the Constitution only confers power to the President of the Republic to dissolve Parliament. The same power is contained in Article 70(1) of the Constitution. The requirements which should be fulfilled in exercising the said power are found in Article 70(1) of the Constitution. The dissolution of Parliament by the President of the Republic should always be by a Proclamation. This is clear when one examines Article 70(1) of the Constitution. Article 33(2)(c) of the Constitution does not discuss about a Proclamation. For the above reasons, I hold that the President of the Republic cannot, under Article 33(2)(c) of the Constitution, dissolve Parliament without one of the requirements stated in Article 70(1) of the Constitution being fulfilled. In the present Case, the date appointed for first meeting of Parliament was on 01.09.2015. This is evident by Government Gazette No.1929/13 dated 26.08.2015 marked P2. Thus, the period of four years and six months of Parliament from the date appointed for its first meeting would end on 28.02.2020. The President of the Republic has dissolved Parliament with effect from mid-night on 09.11.2018. Thus President of the Republic has dissolved Parliament before the expiration of 4½ years from the date appointed for its first meeting. Parliament by a resolution passed by two third Members of Parliament (including those not present) has not requested the President of the Republic to dissolve Parliament. Considering all the above matters, I hold that the Proclamation issued by the President of the Republic dated 09.11.2018 published in Government Gazette No. 2096/70 dated 09.11.2018

dissolving Parliament, is contrary to Article 70(1) of the Constitution; is therefore null and void ab initio; and of no force or effect in Law.

I would like to consider another question. Can the President of the Republic dissolve Parliament whilst a prorogation of Parliament is in force? To answer this question Article 70(3) of the Constitution should be considered. Article 70(3) of the Constitution reads as follows.

*“A Proclamation proroguing Parliament shall fix a date for the next session, not being more than two months after the date of the Proclamation:  
Provided that at any time while Parliament stands prorogued the President may by Proclamation –*

*(i) summon Parliament for an earlier date, not being less than three days from the date of such Proclamation,*

*or*

*(ii) subject to the provisions of this Article, dissolve Parliament.”*

According to this Article if the President of the Republic wants to dissolve Parliament whilst the prorogation of Parliament is in force, it has to be done subject to the provisions of Article 70 of the Constitution. Thus, if the President of the Republic wants to dissolve Parliament whilst the prorogation of Parliament is in force, one of the following conditions should be satisfied.

1. On the day of the dissolution, Parliament must have completed a period of four years and six months from the date appointed for its first meeting.
2. Parliament by a resolution passed by not less than two-third of the whole number of Members (including those not present) should request the President of the Republic to dissolve Parliament.

I will now examine whether there was a prorogation of Parliament when it was dissolved on 9.11.2018 and if that is so, whether any of the above conditions had been

satisfied. Parliament was prorogued with effect from 27.10.2018 until 16.11.2018. This is evident by Proclamation issued by the President of the Republic dated 27.10.2018 published in Government Gazette No.2094/45 dated 27.10.2018 marked P6. Later by Proclamation issued by the President of the Republic dated 4.11.2018 published in Gazette No.2095/50 dated 4.11.2018 marked P7 summoned Parliament to meet on 14.11.2018. However, the President of the Republic dissolved Parliament on 9.11.2018. Thus the dissolution of Parliament has taken place whilst the prorogation of Parliament was in force.

In the present case, the date appointed for 1<sup>st</sup> meeting of Parliament was on 1.9.2015. Thus period of 4 ½ years of Parliament from the date appointed for 1<sup>st</sup> meeting of Parliament would end on 28.2.2020. Thus the 1<sup>st</sup> requirement stated above has not been satisfied when Parliament was dissolved on 9.11.2018. Parliament, by a resolution passed by not less than two-third of the whole number of Members (including those not present), has not requested the President of the Republic to dissolve Parliament. Thus the 2<sup>nd</sup> requirement stated above too has not been satisfied when Parliament was dissolved on 9.11.2018. Therefore, it is clear that the 1<sup>st</sup> or 2<sup>nd</sup> requirement stated above has not been satisfied when Parliament was dissolved on 9.11.2018. For the above reasons, I hold that the dissolution of Parliament by Proclamation issued by the President of the Republic on 9.11.2018 published in Government Gazette No.2096/70 dated 9.11.2018 was against the Article 70(1) and 70(3) of the Constitution and is therefore null and void ab initio; and of no force or effect in law.

For the above reasons I hold that the Proclamation issued by the President of the Republic on 9.11.2018 published in Government Gazette No.2096/70 dated 9.11.2018 dissolving Parliament has violated fundamental rights of the Petitioner guaranteed by Article 12(1) of the Constitution. I have earlier held that the Proclamation issued by the President of the Republic dated 09.11.2018 published in Government

Gazette No.2096/70 dated 09.11.2018 dissolving Parliament, is contrary to Article 70(1) and 70(3) of the Constitution; is therefore null and void ab initio; and of no force or effect in Law.

For the aforementioned reasons, I make order quashing the Proclamation issued by the President of the Republic dated 09.11.2018 published in Government Gazette No.2096/70 dated 09.11.2018 dissolving Parliament and declaring the said Proclamation null and void ab initio and of no force or effect in law.

I have read the draft judgment of His Lordship the Chief Justice. For the aforementioned reasons, I agree with the conclusion reached by His Lordship.

The judgment delivered in this case and aforementioned orders will apply to SC FR 352/2018, SC FR 353/2018, SC FR 354/2018, SC FR 355/2018, SC FR 356/2018, SC FR 358/2018, SC FR 359/2018, SC FR 360/2018, and SC FR 361/2018.

Judge of the Supreme Court

