



VERITÉ  
RESEARCH  
Strategic Analysis for Asia

# Does the Disqualification of Candidates Invalidate Nomination Papers?

LAW &  
GOVERNANCE

*Gehan Gunatilleke*

May 2017

---

# Does the Disqualification of Candidates Invalidate Nomination Papers?

---

*Gehan Gunatilleke*

**Gehan Gunatilleke**, *Attorney-At-Law*, is a Research Director at Verité Research. This brief was prepared with the advice and support of Dr. Nishan de Mel, Viran Corea, Sabrina Esufally, Shamara Wettimuny and Rehana Mohammed.

Verité Research aims to be a leader in the provision of information and analysis for negotiations and policy making in Asia, while also promoting dialogue and education for social development in the region. The firm contributes actively to research and dialogue in the areas of economics, sociology, politics, law, and media, and provides services in data collection, information verification, strategy development, and decision analysis.

Email comments to: [publications@veriteresearch.org](mailto:publications@veriteresearch.org)

Copyright © 2017 Verité Research Pvt Ltd.

All rights reserved. Intended for recipient only and not for further distribution without the consent of Verité Research Pvt Ltd.

# Does the Disqualification of Candidates Invalidate Nomination Papers?

## Introduction

The Court of Appeal judgment in *Buwenaka & Others vs. Geetha Kumarasinghe*<sup>1</sup> has sparked debate concerning the validity of electoral nomination papers that include disqualified candidates. Quite apart from the judgment, a question has arisen in the public domain on whether the disqualification of a candidate invalidates the entire nomination paper that he or she was nominated in. This briefing note attempts to answer this question. It argues that the disqualification of a candidate does not invalidate nomination papers due to:

- (a) The Returning Officer's (RO) lack of statutory authority to reject nomination papers on the basis of a candidate's disqualification, and
- (b) The application of section 115 of the Parliamentary Elections Act, No. 1 of 1981 (PEA), which provides that the disqualification of candidates has no effect on the validity of nomination papers.

This briefing note is presented in three sections. The first section explains the legal recourse available in the event that a disqualified person is elected to parliament. The second explains the provisions of the PEA with respect to the grounds on which a nomination paper can be rejected. The third section explains why the disqualification of a candidate cannot result in the invalidation of the nomination paper in which he or she was nominated.

## 1. Disqualification of Candidates

Article 91 of the Constitution sets out the grounds on which a person may be disqualified from being elected to parliament. For example, article 91(d)(xiii) provides that a 'citizen of Sri Lanka who is also a citizen of any other country' is disqualified from being elected to parliament. This particular disqualification was introduced through the 19<sup>th</sup> Amendment to the Constitution. Meanwhile, section 14 of the PEA reiterates these grounds by referring to the provisions of the Constitution.

Section 92(2)(d) of the PEA provides for a remedy where a candidate who is disqualified from being elected to parliament is in fact elected. It states that an election petition may be filed against a candidate where he or she is disqualified at the time of election. Section 93 provides that such a petition may be filed against a candidate in the Court of Appeal in terms of article 144 of the Constitution.<sup>2</sup> The Court may then invalidate the election of the candidate. Section 95 stipulates that only the following persons may file such a petition: (a) a person claiming to have had a right to be returned or elected at such election; or (b) a person alleging himself to have been a candidate at such election. Meanwhile, section 108

---

<sup>1</sup> C.A. (Writ) 362/2015.

<sup>2</sup> Article 144 provides: 'The Court of Appeal shall have and exercise jurisdiction to try election petitions in respect of the election to the membership of Parliament in terms of any law for the time being applicable in that behalf.'

of the PEA stipulates the time period within which an election petition should be filed. Under ordinary circumstances, an election petition must be presented within ‘twenty-one days of the date of publication of the result of the election in the Gazette’.

Apart from election petitions, any citizen could potentially file a writ application challenging the election of a disqualified candidate. The Court of Appeal in the *Kumarasinghe* case held that such a right exists under article 140 of the Constitution.<sup>3</sup> It also held that Kumarasinghe was disqualified from being elected to parliament due to her dual citizenship, which is a disqualification under article 91(1)(d)(xiii) of the Constitution.<sup>4</sup>

The judgment, however, does not deal with the validity of the nomination paper of the United People’s Freedom Alliance (UPFA) for the Galle district – the nomination paper that included Kumarasinghe as a candidate. In fact, the petitioners did not challenge the RO’s decision to accept the nomination paper, nor did they name any officer of the Election Commission as a respondent in the case.

## **2. Grounds for Rejecting Nomination Papers**

Section 19(1) of the PEA lists five grounds upon which an RO can reject a nomination paper:

- (a) Where the nomination paper has not been delivered to the RO during normal office hours within the nomination period by the secretary of the party, or by the candidate whose name appears first in the nomination paper, or by the candidate whose name appears second in the nomination paper;<sup>5</sup>
- (b) Where the nomination paper does not contain the minimum number of candidates required to be nominated in terms of article 99(3) of the Sri Lankan Constitution;
- (c) Where the deposit required under section 16 of the PEA has not been made;
- (d) Where the consent of one or more candidates nominated, or the oath or affirmation in the form set out in the Seventh Schedule to the Constitution, of one or more candidates, has not been endorsed on the nomination paper; or
- (e) Where the signature of the secretary in the case of a recognised political party, or of the group leader in the case of an independent group, does not appear on the nomination paper, or where such signature has not been attested by a Justice of the Peace or by a notary public.<sup>6</sup>

Section 19(1) of the PEA does not list a candidate’s disqualification as one of the grounds for invalidating a nomination paper. The question then arises as to whether the list of grounds contained in section 19 is exhaustive.

---

<sup>3</sup> Article 140 empowers the Court of Appeal to issue writs of *certiorari*, *prohibition*, *procedendo*, *mandamus* and *quo warranto*.

<sup>4</sup> This briefing note does not comment on the disqualification of Kumarasinghe or any other matter discussed in the Court of Appeal judgment, as these matters are now the subject matter of an appeal before the Supreme Court.

<sup>5</sup> As required by sections 15(4) and (5) of the PEA.

<sup>6</sup> As required by section 15(3) of the PEA.

In interpreting section 19, the legal maxim *expressio unius est exclusio alterius*, meaning ‘the inclusion of one thing is the exclusion of the other’, becomes relevant. According to this maxim, it may be inferred that parliament, by including a list of specific grounds on which a nomination paper must be rejected, intended to exclude any other ground. An RO is therefore not authorised under the PEA to reject a nomination paper on the grounds that a particular candidate nominated in the nomination paper is disqualified.

### **3. The Validity of Nomination Papers**

Under the PEA, each nomination paper is required to contain endorsements by each nominated candidate certifying that he or she is ‘not subject to any disqualification for election’. Thus each candidate certifies his or her eligibility for election to parliament. It is noted that section 19(1A) provides:

Objections to a nomination paper may be made to the returning officer between twelve noon and one-thirty o’clock in the afternoon of the last day of the period of nomination, and no such objection shall be entertained by the returning officer after one thirty o’clock in the afternoon of that day.

The scope of these objections cannot include the disqualification of candidates, as the grounds for rejecting nomination papers under section 19(1) do not include the disqualification of candidates. Moreover, the existence of a disqualification of a candidate is a factual matter, and any claim that a candidate is disqualified would require a factual inquiry. The PEA does not authorise the RO to investigate the qualifications of any nominated candidate. The RO’s role is merely to ensure that the nomination paper meets the requirements set out in section 19(1) of the PEA. Thus the RO can only entertain objections relating to non-compliance with section 19(1) of the PEA, which makes no reference to the qualifications of candidates.

In any event, at a practical level, the Election Commission cannot be expected to conduct inquiries into each candidate’s qualifications before accepting nomination papers. The sheer number of candidates nominated for parliamentary elections (6,151 for the 2015 parliamentary elections according to some reports<sup>7</sup>) makes this task virtually impossible to carry out. For these reasons, it is appropriate that the onus be placed on each candidate to certify his or her eligibility. In the event that some disqualification is alleged, the appropriate remedy would be an election petition filed in terms of section 92 of the PEA, or potentially a writ application. The Court of Appeal can then conduct a proper factual inquiry to determine whether any disqualification existed at the time of election.

---

<sup>7</sup> See ‘August 17 polls: More than 6,100 ready for the fray Sarana, Mervyn, Duminda, Sajin out’, *The Island*, 14 July 2015, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=128231](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=128231).

Section 115 of the PEA removes any doubt as to whether the disqualification of a candidate invalidates a nomination paper. This section explicitly states that a disqualification of a candidate does not result in the invalidation of a nomination paper:

The death, or withdrawal, or *disqualification* under any written law for election or for sitting and voting as a Member, whether *before* or after the election of the Member, of any person or persons nominated by a recognized political party or independent group for election at that election *shall not invalidate or in any way affect the nomination paper of that party or group*, and accordingly the candidature or election of any other person nominated by the party or group on that nomination paper shall not be invalidated by reason only of the fact of the death, withdrawal or disqualification of such person or persons (emphasis added).

The term 'written law' includes the Sri Lankan Constitution,<sup>8</sup> and therefore, section 115 includes the disqualifications contained in article 91 of the Constitution. Accordingly, the disqualification of a candidate following a proper inquiry does not result in the invalidation of the entire nomination paper; only the grounds specifically included in section 19(1) of the PEA can result in such invalidation.\*

It is also worth noting that (a) the rejection of nomination papers pre-election, and (b) the removal by disqualification of a specific candidate post-election take place at two different stages. These stages affect the franchise differently. On the one hand, the rejection of nomination papers takes place *before* the people are afforded an opportunity to elect a candidate. Hence it takes place before the people exercise their right to vote. On the other hand, once a candidate is elected, he or she ceases to be merely part of a list contained in a nomination paper; he or she is an elected representative of the people. Accordingly, to penalise persons (otherwise qualified) after they have been elected to parliament, on the sole basis of another candidate's disqualification, could negate the people's franchise rights and sovereignty.

## **Conclusion**

This briefing note has discussed the law on (a) the grounds on which a candidate is disqualified to be elected to parliament, and (b) the grounds on which nomination papers can be rejected. It is clear that a nomination paper cannot be rejected on the basis that a nominated candidate is disqualified. Accordingly, the disqualification of Geetha Kumarasinghe – should it be upheld by the Supreme Court – cannot result in the invalidation of the UPFA nomination paper for the Galle district. The nomination paper remains valid as per the PEA, and accordingly all other candidates named in the nomination paper (provided they are qualified) retain their seats in parliament.

---

<sup>8</sup> Section 170 of the Constitution defines 'written law' as 'any law and subordinate legislation [and includes statutes made by a Provincial Council, Orders], Proclamations, Rules, By-laws and Regulations made or issued by anybody or person having power or authority under any law to make or issue the same.' Articles 33 and 111A uses the phrase 'Constitution or *other* written law' (emphasis added), which reflects the fact that the Constitution is also within the definition of 'written law'.

---

**\*Notes**

Section 19(1)(b) of the PEA provides that an RO shall reject a nomination paper 'that does not contain the total number of candidates required to be nominated in terms of article 99(3) of the Constitution.' It is possible to construct a tenuous argument that a candidate who is later deemed disqualified was not qualified to be included in the nomination paper in the first place, and was never a 'candidate' within the meaning of section 19(1)(b).

The UPFA nomination paper had the required number of candidates only with the inclusion of Geetha Kumarasinghe. It could be argued that Kumarasinghe was never a 'candidate' owing to her disqualification, and that the UPFA nomination paper therefore did not contain the total number of candidates required to be nominated under article 99(3).

This argument fails to address the clear and precise language of section 115 of the PEA, i.e. that a candidate's disqualification even *before* his or her election has no effect on the validity of the nomination paper.