

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

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

SC FR Application No. 286/2024

1. **J.G. Mangala**
2. **J.G. Thilini Sabodha** (Minor)
Both of;
No. 124/2C, Honnantara South, Kesbewa.

And 52 Others

Petitioners

Vs.

1. **Mr. H.J.M.C. Amith Jayasundara**
Commissioner General of Examinations
Department of Examinations.
2. **Mr. Shantha Padmalal Ariyaratne**
Deputy Commissioner of Examinations,
Department of Examinations.
3. **Mr. A.H.G.R. Eranga Gunenewardena**
Deputy Commissioner of Examinations
School Examinations Confidential Division.
Department of Examinations.
4. **Mr. Subramaniam Vishwanathan**
Deputy Commissioner of Examinations,
Investigations Division,
Department of Examinations.

5. **Hon. Dr. Harini Amarasuriya**
The Honourable Prime Minister
and Minister of Education, Higher Education
and Vocational Training

6. **Ms. J.M. Thilaka Jayasundara**
Secretary,
Ministry of Education.

- 6A. **Mr. Nalaka Kaluwewa**
Ministry of Education, Higher Education
and Vocational Training

7. **Mr. P. Ampavila**
Deputy Inspector General of Police,
Criminal Investigation Department.

8. **Director,**
Criminal Investigations Department

9. **Mr. Dinesh de Silva,**
Officer-in-charge,
Financial Investigations Unit 4,
Criminal Investigation Department.

10. **Ms. Nilushi Priyanthi,**
Officer-in-charge,
Special Investigations Unit II,
Criminal Investigation Department.

11. **Mr. Priyantha Weerasooriya**
Inspector General of Police (Acting),
Police Headquarters.

12. **Hon. Vijitha Herath**
Minister of Foreign Affairs,
Foreign Employment and Tourism

12A. Hon. K.D. Lal Kantha

Minister of Agriculture, Livestock, Land and Irrigation

12B. Hon. Bimal Rathnayaka

Minister of Transport, Highways, Ports and Civil Aviation

12C. Hon. Sunil Handunneththi

Minister of Industry and Entrepreneurship Development

12D. Hon. Ramalingam Chandrasekar

Minister of Fisheries, Aquatic and Ocean Resources

12E. Hon (Prof.) Anil Jayantha Fernando

Minister of Labour

12F. Hon. Samantha Vidyaratna

Minister of Plantation and Community Infrastructure

12G. Hon. Anura Karunathilaka

Minister of Urban Development, Construction and Housing

12H. Hon. (Dr). Nalinda Jayatissa

Minister of Health and Mass Media

12I. Hon. (Prof.) A.H.M.H. Abayarathna

Minister of Public Administration, Provincial Councils and Local Government

12J. Hon. Wasantha Samarasinghe

Minister of Trade, Commerce, Food Security and Cooperative Development

12K. Hon. Harshana Nanayakkara
Minister of Justice and National Integration

12L. Hon (Mrs.) Saroja Savithri Paulraj
Minister of Women and Child Affairs

12M. Hon. (Dr.) Upali Pannilage
Minister of Rural Development,
Social Security and Community Empowerment

12N. Hon. K.M. Ananda Wijepala
Minister of Public Security and
Parliamentary Affairs

12O. Hon. (Dr.) Hiniduma Sunil Senevi
Minister of Buddhasasana,
Religious and Cultural Affairs

12P. Hon. Sunil Kumara Gamage
Minister of Youth Affairs and Sports

12Q. Hon. (Prof.) Crishantha Abeysena
Minister of Science and Technology

12R. Hon. (Eng.) Kumara Jayakody
Minister of Energy

12S. Hon. (Dr.) Dammika Patabendi
Minister of Environment

13. Mr. I.G.S. Premathilake,
No. 449/8, Dewata Road,
Thithhawella,
Kurunegala.

14. Dr. Suranimala Lekamge,
Department of Examinations

15. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

SC FR Application No. 287/2024

**1. Dehiwala Liyanage Mahesh
Maduranga Liyanage**
No. 300A, "Chandra Niwasa",
Radawana.

And 53 Others

Petitioners

Vs.

- 1. Mr. H.J.M.C. Amitha Jayasundara**
Commissioner General of Examinations,
Department of Examinations.
- 2. Mr. Shantha Padmalal Ariyaratne**
Deputy Commissioner of Examinations,
Department of Examinations.
- 3. Mr. A.H.G.R. Eranga Gunenewardena**
Deputy Commissioner of Examinations,
Department of Examinations.
- 4. Mr. Subramaniam Vishwanathan**
Deputy Commissioner of Examinations,
Department of Examinations.

5. **Hon. Dr. Harini Amarasuriya**
Honourable Prime Minister
and Minister of Education, Higher Education
and Vocational Training
6. **Ms. J.M. Thilaka Jayasundara**
Secretary,
Ministry of Education.
7. **Mr. P. Ampavila**
Deputy Inspector General of Police,
Criminal Investigation Department.
8. **Director,**
Criminal Investigations Department.
9. **Mr. Dinesh de Silva,**
Officer-in-charge,
Financial Investigations Unit 4,
Criminal Investigation Department.
10. **Ms. Nilushi Priyanthi,**
Officer-in-charge,
Special Investigations Unit II,
Criminal Investigation Department.
11. **Mr. Priyantha Weerasooriya**
Inspector General of Police (Acting),
Police Headquarters.
12. **Hon. Vijitha Herath**
Minister of Foreign Affairs, Foreign
Employment and Tourism
16. **Mr. I.G.S. Premathilake,**
No. 449/8, Dewata Road,
Thithhawella,
Kurunegala.

17. Dr. Suranimala Lekamge,
Department of Examinations.

18. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

SC FR Application No. 291/2024

1. Lakshman Bandara Mullegama
No. C-172, Badulupitiya,
Badulla.

And 5 Others

Petitioners

Vs.

- 1. H.J.M.C. Amith Jayasundara**
Commissioner General of Examinations,
Department of Examinations.
- 2. Dr. Harini Amarasuriya, MP**
Hon. Minister of Education
- 3. Ms. J.M. Thilaka Jayasundara**
Secretary,
Ministry of Education.
- 4. Director General**
National Institute of Education
- 5. Illagolle Gedara Sunil Premathilaka**
Director of Planning Division,
National Institute of Education.

6. **Chandrasekara Mudalige Chaminda Kumara Ilangasekara**
No. 192/ A, Araliya Uyana,
Thulhiriya,
Alawwa.
7. **The Director,**
Criminal Investigations Department
8. **Hon. Attorney-General**
Attorney-General's Department,
Hulftsdorp, Colombo 12.

Respondents

SC FR Application No. 294/2024

1. **Subasinghe Mudiyanse Lage Sanudi Thehansa Chandrasena (minor)**
No. 1/64, Kalalgoda Road,
Pannipitiya.

And 7 Others

Petitioners

Vs.

1. **Hon. Dr. Harini Amarasuriya**
Honourable Prime Minister
and Minister of Education
2. **J. M. Thilaka Jayasundara**
Secretary,
Ministry of Education.
3. **H. J. M. C. Amith Jayasundara**
Commissioner General of Examinations,
Department of Examinations.

4. **Shantha Padmalal Ariyaratne**
Deputy Commissioner of Examinations,
Department of Examinations.
5. **Subramaniam Vishwanathan**
Deputy Commissioner of Examinations
(Investigations Division),
Department of Examinations.
6. **Director**
Criminal Investigations Department,
Colombo 1.
7. **Dinesh De Silva**
Officer-in-Charge,
Financial Investigations Unit 4,
Criminal Investigations Department.
8. **I. G. S. Premathilake**
No. 449/8, Dewata Road,
Thithhawella,
Kurunegala.
9. **Chandrasekara Mudalige Chaminda
Kumara Ilangasekara**
No. 192, Araliya Uyana,
Thulhiriya,
Alawwa.
10. **Honourable Attorney General**
Attorney General's Department,
Colombo 12.

Respondents

Before:

Yasantha Kodagoda, PC, J.
Kumudini Wickremasinghe, J.
Arjuna Obeyesekere, J.

Counsel:

Mr. Saliya Pieris, President's Counsel, with Mr. Anjana Rathnasiri, and Mr. Sarinda Jayawardena, instructed by Mr. Manjula Balasooriya, for the Petitioners in SC/FR 286/2024.

Mr. Sanjeewa Jayawardana, President's Counsel, with Mr. Rukshan Senadheera, instructed by Mr. Ashoka Niwunhella, for the Petitioners in SC/FR 287/2024.

Mr. Chrishmal Warnasuriya, with Mr. Priyantha Herath and Ms. Dinali Nishshanka, instructed by Ms. H.L.S.N. Liyanage, for the Petitioners in SC/FR 291/2024. (At the hearing stage, Mr. Priyantha Herath made submissions on behalf of the Petitioners.)

Mr. Pradeep Perera, Attorney-at-Law instructed by Mr. Isuru U. Abeygunawardana for the Petitioners in SC/FR 294/2024.

Mr. Viraj Dayaratne, President's Counsel, Solicitor General with Ms. Hashini Opatha, Senior State Counsel, Ms. Sureka Ahmed, Senior State Counsel, Ms. Madusha Thanipulliarachchi, State Counsel, Ms. Supuni Gunasekara, State Counsel, Ms. Raidha Rizvi, State Counsel instructed by Ms. Nimalika Gunathilaka, State Attorney for the 1st to 12th and 14th and 15th Respondents in SC/FR 286/2024, and SC/FR 287/2024, and for the 1st to 4th, 7th and 8th Respondents in SC/FR 291/2024 and for 1st to 7th and 10th Respondents in SC/FR 294/2024.

13th Respondent in both SC/FR 286/2024 and SC/FR 287/2024, 5th and 6th Respondents in SC/FR 291/2024, and 8th and 9th Respondents in SC/FR 294/2024 were absent and unrepresented.

Argued on: 16th, 17th & 18th December, 2024

Written Submissions tendered on: 19th December, 2024

Decided on: 31st December, 2024

Yasantha Kodagoda, PC, J.

Introduction

- 1) This is a Judgment which relates to four Applications filed in this Court invoking the jurisdiction of the Supreme Court conferred on it by Article 126 of the Constitution read with Article 17. The Judgment is founded upon a consolidated hearing of all four Applications referred to in the caption, at which learned counsel invited this Court to deliver one Judgment which relates to all Applications.

- 2) In the circumstances attendant to these four Applications, it is necessary to place on record, certain procedural matters and events that have occurred during the progression of these Applications leading up to the commencement of the hearing.

The four Applications were filed on the following dates:

- i. SC/FR 286/2024 - 15th October, 2024
- ii. SC/FR 287/2024 - 16th October, 2024
- iii. SC/FR 291/2024 - 21st October, 2024
- iv. SC/FR 294/2024 - 23rd October, 2024

Date on which the Applications were mentioned in open court for the purpose of fixing the matter for support - 24th October 2024

Date on which the Applications were supported and ensuing orders made for the grant of Leave to Proceed and interim measures
- 18th November 2024

Date on which the Applications were considered to ascertain the position of the State
- 2nd December 2024

Date on which hearing commenced

- 16th December 2024

Date on which hearing was concluded (following a day-to-day hearing)

- 18th December 2024

It would thus be seen that, in view of certain salient features of these matters and attendant circumstances, the court identified the need for urgent attention, and accordingly ensured the progression of the cases as expeditiously as possible.

- 3) It is also pertinent to note that all counsel cooperated fully in expeditiously filing the pleadings and proceeded to the extent of inviting Court to treat the 'limited objections', filed on behalf of the Respondents and the 'limited counter affidavits' filed on behalf of the Petitioners together with the material originally tendered to Court by the Petitioners as amounting to the full and final pleadings relating to these cases.
- 4) When these Applications were supported on 18th November 2024, the Court having considered the material presented by the Petitioners, and the submissions of learned counsel for the Petitioners and the Respondents, granted *Leave to Proceed* in favor of the Petitioners on the premise that the Petitioners had presented a *prima facie* case giving rise to a provisional finding reached by Court that Article 12(1) of the Constitution had been infringed by the impugned decisions and actions referred to hereinafter in this Judgment. The Court also made certain interim orders which had the effect of staying the marking of answer scripts pertaining to the Grade 5 Scholarship Examination (hereinafter sometimes referred to as 'the Scholarship Examination' or as 'the Examination') held on 15th September 2024 until the final determination of these Applications. The Court also issued an interim order preventing the implementation of a decision made by one or more Respondents (which would hereinafter sometimes be referred to as 'the selected solution' or as 'the solution'). The second of these two interim orders were in particular, referable to the interim reliefs sought from this Court by the Petitioners in SC/FR 286/2024. Court also made certain incidental orders. The composite effect of these interim orders was to ensure the maintenance of the *status quo* which prevailed at the time the Applications were supported.
- 5) It is also necessary to place on record that learned counsel for all parties agreed with each other that the Court may be pleased to treat the pleadings filed in all four

Applications in a consolidated manner. Nevertheless, in the course of this judgment, certain references will be made to specific material presented to this Court by certain parties in certain Applications.

- 6) Unless otherwise stated, in this Judgment the references to Respondents and documents would relate to Respondents and documents tendered in SC/FR 286/2024.

Parties to the Applications

Petitioners

- 7) In SC/FR 286/2024 and SC/FR 287/2024, of the total number of 108 Petitioners (54 Petitioners per each Application), 54 Petitioners are children who had presented themselves as candidates and sat for the Grade 5 Scholarship Examination conducted by the Department of Examinations of the Ministry of Education on 15th September 2024, and the remaining 54 Petitioners are their parents. Similarly, in SC/FR 291/2024 out of the 6 Petitioners, 3 are child candidates and the remaining 3 Petitioners are their parents. In SC/FR 294/2024, out of 8 Petitioners, 4 are child candidates and 4 are their parents. In SC/FR 291/2024, the 1st Petitioner in addition to being a parent of a child candidate, is an Attorney-at-Law. He is the President of the *Dehiattakandiya Bar Association* and also the President of the *Association of Parents of Students disadvantaged in Grade 5 Scholarship Examination 2024*. This Court has noted that the child candidates in SC/FR 291/2024 are those who sat for the Scholarship Examination from Dharmadutha College, Badulla.
- 8) In SC/FR 286/2024 and SC/FR 287/2024, the Petitioners have pleaded that the Application has been filed and reliefs have been prayed for on behalf of similarly circumstanced students who sat for the Scholarship Examination. The Petitioners have stated that their Application to this Court is being supported by 11,000 other child candidates. Therefore, it is necessary to observe that insofar as similarly circumstanced students who sat for the Grade 5 Scholarship Examination are concerned, these Applications assume to themselves the character of *Public Interest Litigation*.

Respondents

- 9) The Prime Minister Honourable Dr. Harini Amarasuriya who also functions as the Minister of Education, Science and Technology is the 5th Respondent in SC/FR 286/2024 and SC/FR 287/2024, the 2nd Respondent in SC/FR 291/2024 and is the 1st Respondent in SC/FR 294/2024. Following an amendment to the caption in SC/FR 286/2024, the 19 Ministers of the Cabinet of Ministers have been added as Respondents. The Secretary to the Ministry of Education has been cited as the 6th Respondent in SC/FR 286/2024 and SC/FR 287/2024, as the 3rd Respondent in SC/FR 291/2024, and as the 2nd Respondent in SC/FR 294/2024. The Commissioner General of Examinations is the 1st Respondent in SC/FR 286/2024, SC/FR 287/2024, and SC/FR 291/2024. In SC/FR 294/2024, he has been cited as the 3rd Respondent.

- 10) One I.G.S. Premathilaka of No. 449/8, Dewata Road, Thiththawella, Kurunegala, has been cited as the 13th Respondent in SC/FR 286/2024 and SC/FR 287/2024, as the 5th Respondent in SC/FR 291/2024, and as the 8th Respondent in SC/FR 294/2024. It is necessary to observe that this Respondent had, at the time material to these Applications, served as the Director-Planning of the National Institute of Education of the Ministry of Education. One C.M. Chaminda Kumara Ilangasekara of No. 192/A, Araliya Uyana, Thulhiriya, Alawwa has been cited as the 6th Respondent in SC/FR 291/2024, and as the 9th Respondent in SC/FR 294/2024. At the time of filing these Applications, the Petitioners have directly sent Notices of the respective Applications to both these Respondents. However, they were absent and unrepresented in these proceedings.

- 11) The Director of the Criminal Investigation Department has been cited as a Respondent in these Applications.

- 12) As required by law, the Honourable Attorney-General has been cited as a Respondent in all Applications.

The Grade 5 Scholarship Examination

- 13) Towards the end of the 5th Grade of school education (which in fact signals the end of primary education), the Ministry of Education through the Department of Examinations administers an important public examination to which students of public schools (State schools which deliver free education) and private schools which deliver the syllabi stipulated by the State, are entitled to present themselves. This examination is referred to as the 'Grade 5 Scholarship Examination' presumably

because the students who achieve well at the examination become entitled to receive a bursary to assist them to pursue secondary education. It appears from the material presented to this Court that this examination has been administered annually since 1944 in different forms and manifestations. Particularly in view of the entitlement that students who perform exceptionally at this examination receive an opportunity to gain admission to State-owned popular public schools (which may be rightfully called 'flagship schools' of the State), this examination has assumed to itself considerable public importance and attention. While most of these 'popular public schools' to which students clamour to gain admission to are situated in and around the capital city, even at provincial and district levels there are schools to which there is considerable competition to gain admission.

14) Particularly in a developing country such as Sri Lanka in which -

(a) in keeping with the policy of the State pertaining to the delivery of free education to all children,

(b) the directive principles of State policy contained in Article 27(2)(h) of the Constitution, and

(c) the unfortunate and yet significantly prevalent disparity that prevails in State schools relating to the standard of education, educational resources and the availability of extra and co-curricular activities,

it is quite fathomable that parents in particular strive very hard to ensure that their children are successful at this examination. Given the fact that, admission to State schools at the entry level of Grade 1 is primarily limited to those living in close proximity to the relevant school and those whose parents or siblings have studied at the relevant school, the Grade 5 Scholarship Examination is in effect the earliest opportunity intelligent, knowledgeable and talented students living in rural areas and possibly handicapped due to poverty and the lack of or total absence of affluence, have to gain admission to a State school which would confer on them an equal opportunity based on merit, to pursue secondary and tertiary education and be successful in life. Thus, the critical importance of this examination can in no way be underestimated. In fact, as all learned counsel for the Petitioners submitted, this examination is in fact a '*make or break of the entire future*' for the underprivileged masses of this country, who constitute the vast majority. Naturally, the critical importance of this examination is mainly seen and felt by those who wish and need to succeed at this extremely competitive examination and pave the way to gain a reasonable opportunity and a pathway to create a bright future for themselves.

- 15) The Department of Examinations together with the United Nations Education, Science and Cultural Organization (UNESCO) has identified several objectives to be achieved by the administration of this examination. They include the objectives of -
- (a) selecting high achievers from among disadvantaged students for the award of scholarships (bursaries),
 - (b) selection of students for admission to 'high-ranking' schools (referred to in this Judgment as 'popular State schools'), and
 - (c) awarding a certification to students for the successful completion of primary education.
- 16) As highlighted by all counsel for the Petitioners, the law, principles governing assessment of knowledge and skills, and the very nature and purposes of this examination, necessitate it to be held to the highest possible level of integrity. All student candidates must be able to face this examination on an equal footing, subject only to individual variations they carry into the examination hall relating to their own levels of intelligence, knowledge and skills. Nevertheless, it is apparent that not all students who face this examination may have received equal education and training to face this examination. That disparity in preparation of student candidates to face this examination being a very unfortunate factor, affects equality and their performance. However, that was not the subject matter of the dispute presented to this Court.
- 17) The Grade 5 Scholarship Examination is in two parts. Part I contains 40 multiple choice questions and is aimed at assessing different components (14 areas of potentialities, namely (i) substitution, (ii) interpretation, (iii) prediction, (iv) translation, (v) problem solving, (vi) seeing relationships, (vii) identification of cause and effect, (viii) organisation of information, (ix) perception, (x) observation, (xi) interrelation, (xii) reasoning, (xiii) seeing spacial relationships, and (xiv) following instructions) of the Intelligence Quotient (IQ). One hour is made available for students to answer these 40 questions. When assessing, each correct answer attracts 2.5 marks. No marks are deducted for wrong answers. The full paper is marked from a total of 100 marks.
- 18) What is sought to be assessed in Paper II is (i) the vernacular language of the candidate (the mother tongue), (ii) the second language (Sinhala or Tamil, depending on the vernacular) of that candidate, and (iii) English language. In the Affidavit of the 1st Respondent - Commissioner General of Examinations (hereinafter sometimes referred

to as the 'Commissioner General' and as the 'CGE'), the Court has been informed that in Part II, in addition to the above, questions on mathematics and environmental activities are also included. These questions are based on the syllabi taught in Grades 3, 4, and the first two terms of Grade 5. Paper II which is to be answered within a time period of 1 hour and 15 minutes, also attracts a full complement of 100 marks. While 98 marks are allocated for correct answers, the remaining 2 marks are allocated for handwriting and cleanliness in the answer script.

19) Following the completion of assessment of the answer scripts, the aggregate marks earned by each candidate is calculated out of 200 marks, and the marks obtained by candidates are placed in a hierarchical order. However, it is important to note that it is not the raw aggregate mark that is finally declared, but a deviation from the raw marks computed based upon two other factors which are the district of the candidate and the medium in which the candidate sat for the Examination. While the application of these two criteria was not critiqued upon by counsel, it was the consensus position that the application of the formula results in a certain degree of standardisation of the results. Thereafter, based on (i) the performance of the entire cohort of student candidates, (ii) individual performance, (iii) the preferential choices indicated by successful candidates (the schools to which each successful candidate wishes to gain admission), and (iv) the number of places available in the so called 'popular State schools' an announcement is made as regards those who have passed or failed the examination, marks received, and the 'cut-off mark' that is required to be entitled to gain admission to each of the 'popular State schools'.

20) During the hearing into these Applications, learned counsel submitted that to gain admission to some of the more prominent and extremely popular State schools, it has become necessary to obtain more than 170 out of 200 marks. That submission was understandably made to impress upon this Court the highly competitive nature of this examination. This Court was also told that in view of the very large number of student candidates who sit for this examination, it is common to find literally hundreds of students who have secured the same number of marks. In this backdrop, learned counsel for the Petitioners commented that *'every single mark matters'*. Dramatising this aspect, possibly with a tinge of exaggeration, one learned counsel was heard to say that in so far as student candidates from under-privileged areas concerned, this examination amounts to facing a *'life and death situation'* metaphorically highlighting the difference between receiving an opportunity to

succeed in receiving a good education and being almost doomed to fail in life by not gaining a good secondary education.

- 21) The Grade 5 Scholarship Examination for 2024 had been held on 15th September 2024 with 323,879 student candidates presenting themselves at 2,849 examination centers spread throughout the length and breadth of this country. While Paper II had been initially administered from 9.30 a.m. to 10.45 a.m., following a 30-minute break, Paper I had been administered from 11.15 a.m. to 12.15 p.m.
- 22) The root cause for the presentation of these Applications related to some student candidates having had advance information relating to certain questions contained in the examination papers, which revealed that some questions in the examination papers had 'leaked', resulting in the integrity of the examination being compromised. Thus, these Applications relate to a complaint regarding a breach in the integrity of the Grade 5 Scholarship Examination conducted on the 15th September 2024.
- 23) Given the significant and so apparent and unfortunate disparities which exist in the standard of education being delivered by the State (occasioned possibly due to lack of necessary resources and the nature of the mobilisation of available resources), it appears so evidently that success or otherwise at this examination is a critical factor that is likely to impact upon the entire future of student candidates, particularly if they were to be from impoverished backgrounds and attending schools with meagre human and material resources. Disparities in the standards of education exist not only among districts but within schools of a given district as well. President's Counsel Mr. Saliya Pieris submitted that, for most students who passed the Scholarship Examination having stemmed from underprivileged areas of the country, it has been a '*life changing*' event. The Court was moved by certain submissions made in this regard by Mr. Priyantha Herath. He explained convincingly the unfortunate, poor standard of education and the meagre resources available in most schools in the Badulla District. Based on information in the public domain, there is every possibility which leads this Court to infer that there are several other districts in which the standard of education and the quality of educational services are no better. Particularly in that backdrop, this Court appreciates the utmost importance of the Grade 5 Scholarship Examination and the absolute requirement of the highest standard of integrity to be maintained in the administration of that examination.

- 24) Particularly, due to the opportunity students receive to gain admission to popular State schools perceived quite rightly as delivering an education of high standard to its students and the long-term benefits of being a past pupil of a prestigious school, it is understood that there is extreme competition among student candidates to succeed at this examination. For the very same reasons, naturally parents show a keen interest in ensuring that their children succeed at this examination, and mobilize an unusual degree of resources to have their children suitably educated and trained to successfully face this examination. The measures they take in this regard include providing children of supplementary means of education in the form of what has unfortunately though, become a *sine qua non* of our education system, and that being private tuition.
- 25) Learned counsel for all parties have drawn our attention to expert opinion which indicates so evidently that both the lead-up to this examination commencing at times from Grade 3 and the facing of the Grade 5 Scholarship Examination is psychologically traumatising, and therefore is likely to cause both immediate and long-term consequences to children. This aspect of the Grade 5 Scholarship Examination, according to the learned Solicitor General, has resulted in the Government presently considering whether the examination should be abolished altogether and a viable alternative (which is less traumatic) be implemented.
- 26) It is in all these circumstances that learned counsel for the Petitioners emphasised the imperative need to ensure the integrity of this examination. They portrayed how any breach of this examination notwithstanding its minuscule nature could impact upon the rights and wellbeing of students. They submitted that even a perception founded upon a well-founded belief that the examination lacked integrity, would lead student candidates distraught and feeling that irreparable injustice had been occasioned to them.
- 27) It is necessary for this Court to observe that, in this backdrop, it is clear as to why the Petitioners filed these Applications seeking judicial intervention to remedy the situation which had arisen, which the Petitioners view as amounting to an infringement of their fundamental right to equality.
- 28) As a true Officer of Court, the learned Solicitor General did not downplay either the importance of the Grade 5 Scholarship Examination or the need to ensure its integrity. He conceded that the maintenance of the integrity of this examination was a legal

requirement, the breach of which would amount to an infringement of Article 12(1) of the Constitution.

Complaint of the Petitioners

29) The Petitioners allege that after the student candidates of the Grade 5 Scholarship Examination (2024) completed the entire examination, they received information that some student candidates (who are not Petitioners) have prior to the commencement of the examination, received some 'model questions' contained in a 'model question paper' which were also found in the Scholarship Examination Paper. (While the Petitioners in SC/FR 286/2024 have produced parts of images of that 'model question paper' obtained from a *WhatsApp* group marked and produced as "P3", the Respondents have produced marked "R12" the full 'model question paper'.) It has been alleged in the Petitions that some of these questions had appeared in Paper I of the Grade 5 Scholarship Examination.

30) Inquiries made in that regard by the Petitioners themselves had revealed the following information:

- i. On 14th September 2024, from about 6.00 p.m., a 'model question paper' had been shared among a group of students. The sharing had taken place *via* a group which used a modern internet-based communication and social media platform called *WhatsApp*. On the day of the examination around 6.20 a.m., another 'model question papers' had also been circulated among several other *WhatsApp* groups. At some point after the initial sharing, these messages on the said *WhatsApp* group have been deleted.
- ii. The first 'model question paper' referred to above had contained 16 questions. The correct answer to each of the questions had also been marked. Of these 16 questions, 7 questions had been labelled using handwriting containing the words such as '*predicted question*'. Consequent to the initial sharing, there has been considerable circulation of this 'model question paper' through several other *WhatsApp* groups. Most of the sharing had been by private tuition masters providing tuition classes for students sitting for this Grade 5 Scholarship Examination.

- iii. C.M.C.K. Ilangasekara (the 6th Respondent in SC/FR 291/2024 and the 9th Respondent in SC/FR 294/2024), a tuition master conducting tuition classes to prepare students for the Grade 5 Scholarship Examination from the Alawwa area (in the Kurunegala district) had been primarily responsible for the distribution of the 'model question paper' not only *via WhatsApp* but also via the social media platform known as *Facebook*. This person had been the 'Administrator' of the afore-stated *WhatsApp* group. At some point after the initial sharing, Ilangasekara had deleted the *WhatsApp* messages sent by him.
- iv. Another person named Jagath Ekanayake, who is also a tuition master from the Alawwa area, had distributed in advance information relating to the contents of the question paper *via Facebook* and *WhatsApp* for a fee. of certain questions in the Examination paper.
- v. At least insofar as some of the recipients of the messages shared *via* the *WhatsApp* group are concerned, they had received the *WhatsApp* messages containing the 'model question paper' only after submitting monetary consideration to the sender.

31) The Petitioners allege that *prima facie* three (3) of the questions contained in the 'model question paper' bearing numbers 2, 5, and 6 were almost identical to questions 5, 13, and 27 respectively, contained in the Grade 5 Scholarship Examination Paper I. Furthermore, the Petitioners allege that questions 12, 13, 14 and 16 of the 'model question paper' also resembled questions 32, 21, 20, and 31 respectively, in the Scholarship Examination Paper I.

32) While the above is the consensus position of all Petitioners in all four Applications, the Petitioners in SC/FR 294/2024 additionally alleged that question number 60 in Paper II of the Scholarship Examination had also been taught to some students prior to the conduct of the Examination.

33) All the Petitioners alleged that this reveals that most certainly three questions of question paper I of the Scholarship Examination, and in all probability, five other questions (four more questions in Paper I and one question in Paper II) had also leaked.

- 34) The Petitioners alleged that the sharing of these questions had taken place during a period where in terms of the Public Examinations Act, the contents of the examination papers were required to be 'secret', and therefore, no one ought to have had access to any of the questions contained in either of the question papers.
- 35) In view of this 'leak' of contents of the examination papers, the Petitioners alleged that the integrity of the 2024 Grade 5 Scholarship Examination papers (and in particular Paper I) had been breached, and therefore compromised. They submitted further that since the integrity of the Examination paper was called into question in a manner that caused significant injustice to student candidates who did not have access to leaked information prior to presenting themselves for the examination (who according to the Petitioners were the vast majority), their fundamental right to equality before the law had been infringed.
- 36) The Petitioners have complained that the leak has originated from the 13th Respondent - I.G.S. Premathilake, who had been a member of the five-member panel that drafted and settled Part I of the Examination by using draft questions formulated by him on an individual basis.
- 37) With the aid of documents marked "R2A to R2E" (referred to as 'CS3 Forms'), learned counsel for the Petitioners pointed out that the three 'leaked' questions which were almost identical and the four questions which appeared to be strikingly similar had all emanated from the 'CS3 Forms' of I.G.S. Premathilake.
- 38) Particularly learned President's Counsel for the Petitioners in SC/FR 286/2024 Mr. Saliya Pieris strenuously argued that I.G.S. Premathilake who according to him most certainly had acted in breach of the law and passed on at least to C.M.C.K. Ilangasekara the seven questions drafted by him on an individual basis, had access to all questions of the finalised question paper (Part I). Thus, he submitted that, though the Petitioners may not have 'evidence' of further leaks perpetrated by Premathilake, there was every possibility of Premathilake having engaged in further illegal activity by leaking other questions as well which were in Part I of the examination question paper.
- 39) The Petitioners have upon receiving this information relating to the sharing of the 'model question paper' containing leaked questions, submitted complaints to the 1st Respondent - Commissioner General of Examinations, to the Police, to several senior

officials of the Ministry of Education, and also to both His Excellency the President and to the Honourable Prime Minister.

Grievance of the Petitioners

40) The primary grievance of the Petitioners is that in view of the foregoing 'leaks', the 2024 Scholarship Examination has been compromised, and therefore those candidates who did not have the benefit of advance knowledge of the leaked questions have been disadvantaged *viz-a-vis* the candidates who unduly enjoyed the benefit of prior knowledge of the questions in issue. In view of the critical importance of this examination, the Petitioners' position is that their rights have been affected in a manner that would cause serious prejudice to the student candidates. Insofar as their educational prospects are concerned, they claim that the compromising of the integrity of the question papers have deprived them of an equal opportunity the State was obliged to provide to all student candidates so that the entire cohort of student candidates could compete at the examination on an equal footing.

The solution provided by the State and grievances arising thereof

41) The Petitioners claim that the authorities concerned having accepted the fact that three questions contained in Paper I of the Examination had leaked, having considered several possible solutions to remedy the situation, had decided to give full marks (free marks) independent of the actual performance of students, with regard to questions bearing Nos. 5, 13, and 27. The Petitioners complained to this Court that this remedy is flawed and causes an infringement of their fundamental rights due to the following reasons:

- i. The number of questions that have been leaked is a minimum of seven and not three. (This is a reference to four other questions which the Petitioners claim are similar, bearing Nos. 12, 13, 14 and 16 of the 'model question paper'.) However, the identified solution is limited to three questions and not seven, and therefore does not address the entire leak.
- ii. Since it is evident that the 13th Respondent (Premathilake) who had leaked the seven questions had been privy to the totality of the questions contained in the finalised question paper (Part I) and since there is evidence that he had acting in an illegal manner leaked a minimum of three questions and probably four

- more, there is every likelihood of his having leaked other questions as well. The solution does not address this aspect of the leak and its gravity.
- iii. By awarding free marks to three questions, the Department of Examinations fails to take into account the actual performance of students who did not have access to information arising out of the leak (such as the Petitioner student candidates), and would result in unjustly awarding marks to students who had not successfully answered the relevant questions correctly.
 - iv. The identified solution does not cause any penalisation of the students who had benefitted from the leak.

In the circumstances, the Petitioners allege that both the compromise of the question paper arising out of the 'leak' as well as the solution identified by the State to remedy the injustice caused are unjust, unlawful and infringes their right to equality.

Reliefs sought by the Petitioners

42) In view of the foregoing, the Petitioners have sought from this Court the following order and reliefs:

- i. An order of Court that the Grade 5 Scholarship Examination held on 15th September 2024 be declared null and void.
- ii. A declaration that the fundamental rights of the Petitioners who sat for the Grade 5 Scholarship Examination held on 15th September 2024 guaranteed under Article 12(1) of the Constitution have been infringed.
- iii. An order of this Court declaring the afore-stated 'solution' decided upon by the relevant authorities and sought to be implemented, be declared null and void and therefore be quashed [By the amendment moved to the Petition in SC/FR 286/2024, the Petitioners have prayed for an order quashing the decision taken by the Cabinet of Ministers on 25th November 2024 relating to the Grade 5 Scholarship Examination (which is an endorsement of the 'solution' decided upon by the authorities).]
- iv. A direction being issued to the relevant authorities to, altogether cancel Paper I of the Grade 5 Scholarship Examination held on 15th September 2024 and therefor to prepare a fresh examination paper (I) and reconduct a fresh Examination.
- v. A direction on the relevant authorities to altogether cancel Paper II of the Grade 5 Scholarship Examination held on 15th September 2024 and therefor to prepare a fresh examination paper (II) and reconduct a fresh Examination.
- vi. Make order awarding compensation.

Position of the Commissioner General of Examinations

- 43) According to the Affidavit tendered to this Court by the 1st Respondent - Commissioner General of Examinations (hereinafter sometimes referred to as 'the Commissioner of Examinations', as 'the Commissioner' or as 'the CGE'), the Grade 5 Scholarship Examination held on 15th September 2024 had been held under his directions in terms of the authority he had received by the Public Examinations Act, No. 25 of 1968 (as amended). The two question papers of the Examination had been prepared separately by two different panels referred to as 'Test Development (Paper Setting) Panels' (hereinafter sometimes referred to as the 'paper setting panel'). The paper setting panel for Paper I comprised of five members who are experts in the field of primary education. In preparation for the September 2024 Grade 5 Scholarship Examination, the paper setting panel had comprised of five individuals who had participated in the preparation of the question paper during previous years and the 13th Respondent who had been appointed to that panel for the first time. The role of each member of the panel was to draft questions by themselves and submit those questions documented in a 'CS3 Form' and handover their respective forms to the 'School Examinations Confidential Branch' of the Department of Examinations. Thereafter, the paper setting panel met and considered the draft questions submitted by the individual panelists and finalised the question paper. On certain occasions, draft questions submitted by individual panelists may have been modified prior to the inclusion of such questions in the question paper. This had been the practice followed during the previous years as well.
- 44) Within a short period of time following the conclusion of the Grade 5 Scholarship Examination held on 15th September 2024, the Department of Examinations received a series of complaints from different parties regarding the circulation *via* social media, a purported 'model question paper' comprising of 16 multiple choice questions which included a number of questions allegedly similar to some questions which were in Paper I. Furthermore, the complainants had alleged that the individuals responsible for having disseminated the 'model question paper' had discussed the questions contained therein with candidates the day before the Examination. That had been done notwithstanding the prohibition on tutoring during that time period.
- 45) Following the receipt of these complaints, the Commissioner General had instructed the 'Investigations Branch' of the Department of Examinations to conduct an

investigation into the information provided by the complainants. He had also met with members of the 'Controlled Marking Panel' which comprised of members of the 'paper setting panel', certain subject experts, chief examiners and some experienced senior teachers. Thus, the 13th Respondent has also participated at this meeting. Conducting such a meeting with the 'Controlled Marking Panel' is a routine practice prior to the commencement of the evaluation process (marking of the answer scripts). This meeting is held for several purposes. On this occasion, the meeting included a discussion on the complaints received regarding the leak of certain questions. Further meetings of the same 'Controlled Marking Panel' took place without the 13th Respondent being invited to participate. This was because, by that time suspicion had developed regarding his involvement in the 'leak'. At these meetings, a 'tenuous similarity' had been observed between three questions that appeared in the 'model question paper' and three questions in the Examination Paper I. The Commissioner General claims that the perceived similarity was most likely 'inconsequential' as far as the fairness and integrity of the examination was concerned. He has submitted to this Court that, nevertheless in 'abundance of caution', he decided to 'exclude' the three questions from the scoring process and thereby give marks to candidates for a total of 37 questions of Paper I. He had thereafter issued a public Notice of this decision.

46) However, on the 18th of September 2024, some parents had protested in front of the Department of Examinations, and consequently the Commissioner General had engaged in discussions with a representative group. They had complained that more than three questions of Paper I had leaked. The Commissioner General had requested the parents to submit material in support of their claims. He had assured them that candidates would not be disadvantaged due to the 'leak' of the questions. According to the Commissioner General, a consideration of the further material submitted by the parents did not support the position of the parents that more than three questions had leaked.

47) On the 18th of September 2024, the 'paper setting panel' presented a report ("R5") to him suggesting that since there was a similarity in three questions contained in the 'model question paper' in comparison with the Examination paper, that either the three questions be eliminated from the scoring process or that all candidates should be given full marks for those three questions.

- 48) On the 18th of September 2024, the Commissioner General appointed an ‘expert committee’ comprising of three Deputy Commissioners of Examinations who were attached to the Assessment and Evaluation Reforms Branch and the Evaluation of School Exams Branch of the Department of Examinations. This was for the purpose of conducting a *‘thorough assessment of the appropriate options that were available to remedy the issue, taking into consideration international best practices’*.
- 49) On the following day, following the Report received from the Investigations Branch of the Department of Examinations (“R6”), a complaint was presented to the Criminal Investigations Department (CID), so that a full investigation could be conducted into the matter.
- 50) On the 26th of September 2024, a meeting was convened by the Honourable Prime Minister (in her capacity as the Minister of Education, Science and Technology) at which the Honourable Prime Minister had instructed that a Report be submitted on remedial action to be taken with regard to the alleged leak of certain questions.
- 51) On 27th September 2024, the expert committee (comprising of three Deputy Commissioners) submitted its Report (“R7”) to the Commissioner General. It contained the following three options as possible solutions to the issue:
- i. Removal of the compromised three test items from scoring (deletion of the compromised (leaked) questions and marking only the answers given to the remaining 37 questions).
 - ii. Awarding free marks for the compromised three questions to all candidates.
 - iii. Cancelling the Examination that was held (Part I) and reconducting a new Examination.

By letter dated 27th September 2024 (“R8”), the Commissioner General presented a copy of “R7” to the Honourable Prime Minister. That was done *via* the Secretary to the Ministry of Education.

- 52) On 28th September 2024, the Honourable Prime Minister appointed a seven-member ‘expert committee’ comprising of distinguished specialists from the fields of educational administration, psychological counselling, psychotherapy, and examination management. She requested the experts (identified by her) to recommend remedial options for the resolution of the issue that had arisen. The letter by which the experts were appointed was produced marked “R9”.

- 53) By the 29th September 2024, the Report of that expert committee was submitted to the Honourable Prime Minister (“R10”). This committee recommended the awarding of free marks to candidates for the compromised questions as being the most appropriate solution. They had highlighted that this solution was aimed at ‘safeguarding the interests of students, while preserving the psychometric integrity of the examination’.
- 54) Furthermore, on the 3rd October 2024, on the instructions of the Honourable Prime Minister, the Secretary to the Ministry of Education appointed another five-member expert committee to conduct an extensive investigation and report on whether more than three questions in Paper I of the Examination could be considered as having been leaked. A copy of the letter of appointment of that committee was produced marked “R11”. On the 5th of October 2024, the Report (“R12”) of this five-member expert committee was received. It contained the unanimous view of the members of this committee, that in addition to the three questions of the model paper which bore similarity to three questions in the actual question paper, the other questions which the parents had alleged were similar were in fact not so similar. In the circumstances, the committee opined that there was no necessity to take measures with regard to any additional questions.
- 55) In view of the foregoing, the Commissioner General of Examinations has submitted in paragraph 40 of his Affidavit submitted to this Court that “*it was decided to adopt the recommended solution of awarding free marks for the three compromised questions in Paper I of the said 2024 examination to all candidates and that the said examination will not be re-administered*”. On the 14th of October 2024, this decision was made known to the public through a press release.

Position of the Honourable Prime Minister and the Secretary to the Ministry of Education

- 56) The Court has noted that neither the 5th Respondent – the Honourable Prime Minister/ Minister of Education nor the 6th Respondent – Secretary to the Ministry of Education have presented to this Court, Affidavits setting out their respective positions. In the circumstances, this Court proceeds on the footing that the Affidavit of the Commissioner General of Examinations reflects correctly the role performed by both such Respondents.

Position of the Director of the Criminal Investigation Department (CID) and investigational findings

57) The former Director of the Criminal Investigation Department (8th Respondent - Senior Superintendent of Police E.M.M.S. Dehideniya) has submitted to this Court an Affidavit dated 5th November 2024 containing a description of the criminal investigation conducted into the complaint made to the CID by the Department of Examinations.

58) Conscious of the fact that further investigations into this matter may have been conducted after the afore-stated affidavit was filed, and since it would be in the best interests of justice for this Court to take into consideration such investigational findings too, on 18th December 2024, while the hearing was proceeding, this Court directed the present Director of CID to submit a comprehensive report relating to the investigation conducted and investigational findings. The said Report was received on 19th December 2024 and this Court has benefitted from a consideration of its contents.

59) According to the Report submitted by the Director of the Criminal Investigation Department - Senior Superintendent of Police H.W.I. Muthumala, the investigation conducted by the Officers of the said CID has revealed the following:

- The 13th Respondent has contributed seven questions to the process that led to the preparation of question Paper I of the Grade 5 Scholarship Examination. Following deliberations by the paper setters (which included the 13th Respondent) three out of the seven such questions he contributed had been included into question paper I.
- The *WhatsApp* group referred to by the complainants as having being used to share the leaked questions had been called 'Grade 05 New 2024' and its 'Administrator' had been a teacher of the Alawwa Andiyadeniya Primary School named Chaminda Kumara Ilangasekara. He was additionally a person conducting tuition classes to prepare students for the Scholarship Examination. [It is to be noted that this person has been cited as the 6th Respondent of SC/FR 291/2024 and 9th Respondent of SC/FR 294/2024.]
- A person by the name of P.A.M. Buddhika Pathiraja using a mobile phone bearing No. 0714407914 and through the afore-stated *WhatsApp* group has

shared within that group several questions contained in a 'model question paper' containing sixteen questions. This has happened on the afternoon of 14th September 2024. In that 'model question paper' is found the handwriting of Chaminda Kumara Ilangasekara. The afore-stated question paper contains certain endorsements such as "model" ('ආදර්ශයක්'), "the appearance of a gate" ('ගේට්ටුවක පෙනුම'), "different image" ('වෙනස් රූපය'), and "special, just have a look, make sure to not circulate" ('විශේෂයි, නිකමට බලා ගන්න, අනිත් අත නොයවන්න වග බලා ගන්න'). These endorsements contain the handwriting of Chaminda Kumara Ilangasekara.

- Following the sharing this 'model question paper', at a subsequent point of time, the messages shared through the *WhatsApp* group had been deleted.
- Among the sixteen questions contained in the distributed 'model question paper' had been the seven questions presented by Sunil Premathillake (13th Respondent) to the paper setting panel.
- There had been no leakage of the questions contained in the finalised question paper during the printing of the question paper, its packing, and its formal distribution to examination centers.
- An analysis of communication details between Sunil Premathillake and Chaminda Kumara Ilangasekara reveal that prior to the conduct of the Grade 5 Scholarship Examination (held on 15th September 2024) they have been communicating with each other using their mobile phones.

60) The Report submitted by the Director of the CID reveals that on 22nd September 2024 Sunil Premathillake and on 24th September 2024 Chaminda Kumara Ilangasekara had been arrested by Officers of the CID in relation to the commission of several offences contained in the Penal Code, Public Examinations Act and the Oaths Ordinance. Following their arrest, they had been produced before the learned Magistrate of Kaduwela in case No. B 81127/24 and placed in remand custody. On the 29th of October 2024, both suspects had been enlarged on bail.

61) Several mobile phones and other electronic devices have been seized by the CID from several individuals including Sunil Premathillake and Chaminda Kumara Ilangasekara, and have been forwarded to the Department of Government Analyst

for analysis and report. It appears that the Report of the Government Analyst is yet to be received.

62) Furthermore, investigations have also been conducted with regard to other possible instances of questions contained in the Examination paper having been taught to students by certain other tuition masters prior to the commencement of the Examination. However, so far, no findings have been reached by the Director of the CID with regard to those possible instances.

Submissions of learned counsel

(I) Nature and the scope of the breach (due to the leak) and its effect on the Examination –

63) President's Counsel Mr. Saliya Pieris submitted vehemently that, though the authorities had proceeded on the footing that 'only' 3 questions had leaked, in actual fact it is probable that many more questions had leaked. He also submitted that many questions contained in the circulated 'model question paper' would have assisted students who had received the said paper to correctly answer questions in the Examination question paper. He said that it was alarming that the 13th Respondent who had leaked a minimum of 3 questions which were in the finalised Examination paper and 4 more questions which he contributed to the question paper setting panel, was privy to all the questions in the finalised Paper I. Thus, there was a grave danger in his having leaked other questions as well (the entire paper) through multiple sources. Based on this line of argument, learned President's Counsel submitted that the entire question paper had been compromised. He submitted that the authorities had turned a '*Nelsonian eye*' to this real possibility. He also submitted that, in these circumstances, the 1st Respondent was not in a position to guarantee the integrity of the remaining 37 questions contained in Part I of the Examination.

64) Mr. Pieris also submitted that, in view of section 6(1) of the Public Examinations Act which required the contents of an examination paper from the time the question paper is set up to half-hour following the commencement of the examination be a 'secret document', and since in this instance by the leaking of some questions during that time period there had been a breach of that requirement, Part I of the Grade 5 Scholarship Examination held on 15th September 2024 had become a 'nullity'. In the circumstances, he submitted that no further action can be taken regarding the said

examination paper and the decision to award full marks for the leaked questions is unlawful.

- 65) President's Counsel Mr. Sanjeewa Jayawardana submitted that the material submitted to Court by the Respondents supplemented the material placed before this Court by the Petitioners. The composite effect of the material has resulted in it being proven beyond doubt that at the bare minimum 3 questions contained in question Paper I had been compromised. Thus, he submitted that, there was a grievous infringement of Article 12(1) occasioned by a breach of the Rule of law.
- 66) Mr. Jayawardana submitted that, the fundamental rights of the Petitioners have been violated since, (a) Question Paper I has been grievously tainted due to the leak of questions, (b) the integrity of the examination has been compromised and undermined, (c) societal confidence in the examination system has been totally eroded, and (d) the trust and faith of student candidates and stakeholder public has eroded due to the absence of confidence that the performance of candidates would be assessed honestly, accurately and objectively.
- 67) Mr. Jayawardana submitted that Article 12(1) had been violated manifold, due to (a) the violation of the Rule of law, (b) discrimination (as only some of the student candidates had benefitted from the 'leak'), (c) violation of the public trust doctrine, and (d) breach of the legitimate expectation of student candidates that they would be required to sit for an examination which meets with a high standard of integrity.
- 68) Learned President's Counsel also submitted that, as the learned Solicitor General had conceded that the 13th Respondent had leaked 3 questions of Part I, that the Examination had been compromised was beyond debate. He further submitted that the suspicion that more than 3 questions contained in Part I of the Examination had been compromised due to further leaks, was not an ill-founded. He expressed agreement with the submission of Mr. Peiris that, this well-founded suspicion was primarily due to the 13th Respondent having been privy to the totality of the questions included in the finalised Paper I.
- 69) Mr. Jayawardana exhibiting his eloquent use of the English language, submitted that *"... the tragedy of such a leakage, is that children who have one solitary opportunity, through excelling at the Grade 5 scholarship exam, at which, a mere one mark difference, can mean, denial of a much cherished change to be admitted to better equipped public schools with the*

very best teaching facilities and co-curricular and extra-curricular activities, that would otherwise not be available to a child in their present school, from which they have a fierce aspirational goal of elevating their quality of education". Learned President's Counsel proceeded to further buttress his submission by stating that, *"it is also a blight on all principles of meritocracy and qualitative considerations, which, pre-eminently underpin the very bedrock of the objectives of the Grade 5 Scholarship Exam"*.

- 70) He drew the attention of the Court to the findings of the several committees appointed to investigate into the leak of questions, none of which has excluded the possibility of all the questions contained in Paper I having been leaked.
- 71) Learned counsel for the Petitioners in SC/FR 291 and 294/2024 supported the submissions of both Mr. Pieris and Mr. Jayawardana made with regard to the above-mentioned matters. Additionally, learned counsel for the Petitioners in SC/FR 294/2024 submitted that question No. 60 of Part II of the Examination had also been compromised, as a similar question had been discussed at an online class.
- 72) Replying to the submissions of learned counsel for the Petitioners, the learned Solicitor General set out his views regarding the three questions that are alleged to have been compromised due to its leak, namely, questions 5, 13, and 27 of Part I ("R1") of the Examination and the corresponding questions found in the 'model question paper' ("P5") at question numbers 2, 5, and 6 respectively. That component of his submission included a comparison of the three pairs of questions, highlighting both similarities and dissimilarities.
- 73) Referring to submissions of counsel for the Petitioners that in addition to the afore-stated three questions, certain other questions had also been leaked (as they too appeared in the 'model question paper'), the learned Solicitor General citing contents of the report ("R12") of the panel that examined the issue, explained in detail as to why questions numbers 1, 20, 21, and 32 are significantly dissimilar to questions numbers 15, 14, 13, and 11 & 12 contained in the 'model question paper'. In view of the conclusions reached by this Court and therefor the approach taken, it is not necessary to go into the description provided by the learned Solicitor General in this regard. Be that as it may, it is noteworthy that the position of the Petitioners with regard to this second category of questions was that, questions bearing numbers 20, 21, 31, and 32 contained in the examination paper ("R1") were similar to questions

bearing numbers 14, 13, 16, and 12 contained in the model questions paper (Annexure 3 of "R12").

- 74) Commenting on the allegation that question No. 60 of Paper II had also leaked, the learned Solicitor General submitted that it is a solitary allegation made only by the Petitioners in SC/FR 294/2024, there is no independent proof of the truthfulness of that allegation, and that the Petitioners have admitted that they did not file a complaint with the authorities regarding this alleged leak. In view of these reasons and also the fact that the supporting Affidavit had been dated 17th October 2023, learned Solicitor General quite rightly invited Court to disregard this allegation.
- 75) The learned Solicitor General submitted that in the three questions that had been compromised due to the leak, the potentialities of the Intelligence Quotient that was sought to be assessed are as follows.
- i. Question 5 - Interpretation and perception - Question 19
 - ii. Question 13 - Seeing relationships and interrelations - Questions 12 and 34 (34 being more advanced than 13)
 - iii. Question 27 - Spatial relationships and reasoning - Question 29
- He submitted that the very same potentialities were sought to be assessed in four other questions which were not compromised.
- 76) The learned Solicitor General in his post argument written submissions has also submitted that of the 323,879 candidates, 79,787 candidates have sat for the Examination in Tamil medium. The circulation of the model examination paper containing three questions of Part I had not been revealed to the Tamil medium students. Therefore, there is, if at all, a minimum tendency for the Tamil medium students to have been impacted by the leak.
- 77) The learned Solicitor General has also brought to the attention of Court two pertinent factors, that being, (a) certain questions in the actual examination paper being similar or almost identical to those in previous question papers, and (b) the possibility which an analyst has (without the aid of confidential information) to reasonably predict questions that are likely to be included in an examination paper and based on such prediction prepare one or more model question papers. That he submitted was not illegal.

78) The learned Solicitor General agreeing with the submissions made in this regard by the learned counsel for the Petitioners, has accepted the fact that maintaining the integrity of the examination is of utmost importance and that every possible measure should be taken to ensure its integrity. He submitted that notwithstanding all precautions taken, the situation referred to by the Petitioners had arisen. The breach in the integrity of the Examination had occurred and it was necessary to take suitable remedial action in response to the unfortunate situation.

79) Continuing with his submissions, the learned Solicitor General submitted that in a situation of this nature, it is necessary to assess the nature of the breach and its impact on the overall examination and develop a solution which is commensurate with the extent of the breach.

(II) Solution adopted by the authorities and its effect -

80) President's Counsel Mr. Saliya Pieris submitted that, due to the following reasons, the solution of granting free marks for the 3 questions that had admittedly been leaked was arbitrary, irrational, and unlawful:

- i. The compromising of the integrity of the Examination was not limited to three questions, as even the Report of the expert committee ("P12") notes that the leaking of question No. 32 of Part I cannot be ruled out.
- ii. That the 13th Respondent had access to the entirety of the finalised examination paper, reveals clearly that he had the opportunity of leaking the other questions in the finalised question Paper I, as well.
- iii. In view of the afore-stated two factors, the breach of the integrity of the examination paper was a 'severe security breach', which according to EST and Pearson VUE standards (considered by the panel of Deputy Commissioners) require re-administration of the Examination.
- iv. The impact of the leak of even 3 questions amounts to a 7.5% of the total marks for Paper I, which in the circumstances of this Examination is crucial.
- v. The solution of awarding full marks for three questions was discriminatory of the student candidates who did not benefit from the leak of the 3 questions and is not reflective of the actual performance of candidates in answering the 3 questions in issue (both those who had honestly and correctly answered one or more of the questions in issue, and those who had not correctly answered any of those questions).
- vi. The solution has an adverse impact on the competitive nature of this Examination.

- 81) Learned President's Counsel drew the attention of this Court to the Judgment in *Visal Bashitha Kaviratne and Others vs. W.M.N.J. Pushpakumara, Commissioner General of Examinations and Others* [SC/FR/29/2012, SC Minutes of 25.06.2012], in which the Court had held that, consideration of a group of students as forming a single population, when in fact the said group of students belonged to two different populations, was a violation of Article 12(1).
- 82) President's Counsel Mr. Sanjeewa Jayawardana commenting on the solution to award free marks for the compromised three questions, submitted that it (the solution of awarding free full marks for the compromised questions) "*abysmally missed the radar of those who finally, recklessly decided upon this matter, without (a) any identification of the real objectives of the exam, and (b) who therefore as a result of this conspicuous failure or curious amnesia with regard to the paramount and pre-eminent objective of the exam, provided a recklessly arbitrary, purported hurried solution*".
- 83) Mr. Jayawardana submitted that the 'solution' formulated and adopted by the authorities is arbitrary, in that, it had been developed without identifying and keeping in mind the need for the solution to contribute towards the achievement of the objectives of conducting the highly competitive Grade 5 Scholarship Examination. He drew the attention of this Court to the fact that even when formulating the 'terms of reference' of the several expert committees established to submit recommendations, the Prime Minister / Minister of Education had failed to invite those committees to keep in mind the critical objectives and purposes for which the Examination is held.
- 84) Mr. Jayawardana also emphasised the point raised by Mr. Pieris that, the solution identified by the authorities would fail to take into account that the implementation of the solution would result in those who would not have successfully answered the three questions gaining an advantage over those students who would have correctly answered the questions without benefitting from the leakage of the said questions. He thus submitted that the solution identified by the authorities would unfairly prejudice honest and capable students. He submitted that the solution developed by the authorities would result in an irrational manipulation of the marks, and would cause disadvantage to honest students who did not benefit from the leakage of questions.
- 85) Both learned counsel for the Petitioners in SC/FR 291 and 294/2024 supported the submissions made with regard the alleged inappropriateness and unlawful character

of the solution identified and adopted by the State. Learned counsel for the Petitioners in SC/FR 291/2024 submitted that consideration given by almost all committees other than the expert committee comprising of three Deputy Commissioners of Examinations (Report at “R7”) was utterly inadequate, possibly occasioned by the experts having been given only ‘24 hours’ to submit their views. Further, the members of the committees had merely presented their individual views and had not deliberated into the matter and submitted a joint Report.

86) Replying, learned Solicitor General submitted that the decision to award free marks for the three compromised questions was arrived at after careful consideration of the Reports submitted by the several committees. In his post-argument written submissions, the learned Solicitor General reiterating the paraphrased contents of the Affidavit of the Commissioner General of Examinations, set out the series of actions taken by the CGE by constituting different panels and committees to investigate into the complaints received relating to the leakage of questions and also to develop recommendations aimed at providing a solution to the problem that had arisen. These submissions can be summarised in the following manner:

- i. The CGE initially instructed the investigations branch of the Department of Examinations to conduct an investigation into the complaints and information received. On 19th September 2024, he received the Report of the investigation branch (“R6”). Based on a recommendation of that branch, he took steps for a complaint to be made to the CID, while ensuring that the internal investigation continues.
- ii. Following initiation of action by the CGE, on 18th September 2024, he received a Report prepared by ‘Paper Setting Panel’ (“R5”). This Report contained two recommendations. They were, (a) to eliminate all three questions in issue from the scoring (marking) process and awarding marks to candidates for only 37 questions, or (b) that all candidates be given free marks (independent of their performance) for the three questions.
- iii. On 18th September 2024 the CGE appointed an expert committee comprising of three Deputy Commissioners of Examinations to conduct a thorough assessment and to recommend remedial action. On 27th September 2024 the Report of the Committee (“R7”) was received which contains three options. Those three recommendations included the two recommended by the paper setting panel and a third recommendation being the re-administration of a new exam. These three recommendations were based on a meticulous analysis and

- in the formulation of remedial action, consideration had been given to relevant international standards. The Report contained an analysis of each recommended option founded upon the positive and negative features of each recommended action.
- iv. On 27th September 2024, “R7” was submitted to the Honourable Prime Minister who is also the Minister of Education.
 - v. On 28th September 2024, the Honourable Prime Minister (possibly in her capacity as the Minister of Education) constituted a seven-member expert committee who possessed specialisation in different areas relevant for this matter, to express their views regarding remedial action proposed by the previous committees.
 - vi. Notwithstanding the limited time given to them, this Committee’s views (on an individual basis) were available by the following day. These individual views have been produced marked “R10”.
 - vii. On 3rd October 2024 a five-member expert committee was appointed by the Secretary to the Ministry of Education based on instructions received by her from the Prime Minister / Minister of Education, to conduct extensive investigations into whether more than three questions of the exam Paper I could have been leaked. The Report of that five-member expert committee (“R12”) was available by 5th October 2024. It contained the unanimous views of the committee, that in addition to the three questions (5, 13, and 27) no further questions had been compromised.
 - viii. In view of all these Reports it was decided not to re-administer examination Paper I, and to award free marks for the 3 compromised questions.
 - ix. The final decision was announced to the public at a press conference held by the Commissioner General of Examinations on 14th October 2024.

87) The learned Solicitor General submitted that each of the solutions available had its own ‘pros’ and ‘cons’ (advantages and disadvantages). There was no perfect solution. Implementation of each of the solutions he submitted would extract an element of criticism and displeasure. What was selected was the most reasonable, suitable, viable and equitable solution. It was founded upon *inter alia*, equitable considerations and was based on expert views. The identified solution is commensurate with both the nature and the impact of the alleged breach. The decision was not arbitrary as due process was followed and decided upon following careful consideration. The learned Solicitor General submitted that due to all these factors the identified solution of

awarding free marks for the three compromised questions did not violate the fundamental right to equality.

(III) The demand that the Examination be conducted afresh (re-administered) -

88) President's Counsel Mr. Saliya Pieris submitted that since the breach in the integrity of Examination Paper I was severe, the only lawful and reasonable solution would be to conduct the Examination (Paper I) afresh. He submitted that, though having to face the examination afresh would cause some amount of psychological trauma to student candidates, that would be far less traumatic than the long-term feeling that injustice had been perpetrated to innocent and honest students. He said that such students throughout their lives would suffer from injustice occasioned to them by the implementation of the impugned solution, which would result in an adverse effect to their educational pursuits. He submitted that already the student candidates were distressed by their well-founded perception that the Examination had been compromised and some students (not all) had benefitted from the leaked questions.

89) Supporting this submission of Mr. Peiris, President's Counsel Mr. Sanjeeva Jayawardana submitted that, *"in the mind of a very talented but yet a student coming from a humble background in a rural area, this is the only opportunity to obtain admission into a school with much advanced facilities ... If access of such a talented student into a school with comparatively better facilities is denied due to a perversity of the marks, irreversible and irremediable harm, prejudice and mental trauma would be caused to such a student"*.

90) Mr. Jayawardana invited this Court to adopt the approach taken by the Supreme Court of India in *Chairman, All Railway Record Board and Another vs. K. Shyam Kumar and Others* [2010 AIR SCW 4240], wherein that court had observed that even a minute leakage of a question paper would be sufficient to besmirch the written test and go for a re-test so as to achieve the ultimate object of fair selection. He said that in the instant case, the leakage was not minute and the Respondents have admitted the leakage of 3 questions and also admitted that there is a 'strong suspicion' ("R12") in the leakage of a fourth question. He said that in the circumstances, a fair selection could only be achieved by holding a re-test, at the very least, in respect of the questions that are confirmed and suspected to have been compromised. In this regard, Mr. Jayawardana drew the attention of this Court to the judgement of the Supreme Court of India in *Tanvi Sarwal vs. Central Board of Secondary Education* [WP (Civil) No. 298/2015 SC Minutes 15.06.2015] wherein that court had observed that *"we are aware, that the abrogation of the examination would result in some inconvenience to all concerned*

and that some extra time would be consumed for holding a fresh examination with renewed efforts therefor. This however, according to us, is the price stakeholders would have to suffer in order to maintain the impeccable and irrefutable sanctity and credibility of a process of examination, to assess the innate worth and capability of the participating candidates for being assigned inter se merit positions commensurate to their performance based on genuine and sincere endeavours”.

91) It is necessary to place on record that all counsel for the Petitioners were unanimous in their submission that the only way in which the ‘injustice’ caused could be lawfully and reasonably remedied was by holding the Examination afresh.

92) Responding to the demand made on behalf of the Petitioners by learned counsel, that the impugned Paper I of the Scholarship Examination held on 15th September 2024 be cancelled and a fresh examination be held, the learned Solicitor General submitted the following as being reasons as to why this Court should not direct the conduct of a fresh examination:

- i. The preparation, vetting, finalisation, administration and the marking, computation and the release of results of Paper I would require a considerable period of time and would result in considerable delay. This would in turn result in the entire school system being adversely affected by the delay in the release of the results and would also have a ‘domino effect’ on the conduct of all the other school and other public examinations. This will in turn contribute towards further delay occasioned by the Covid-19 pandemic and the economic crisis of 2022.
- ii. There are 3,968 primary schools in Sri Lanka which comprise of grades 1 to 5 (only). Should the 2024 Scholarship Examination be re-administered, it would result in students of these schools being deprived of grade 6 education for several months.
- iii. Re-administration of the Examination would have an adverse impact on the conduct of co-curricular activities.
- iv. Having to prepare (be trained and study) afresh for Paper I will cause inconvenience and psychological trauma to the students.

93) Learned Solicitor General also submitted that the demand that the Examination be conducted afresh should be viewed by this Court in the backdrop of the Petitioners being only a very small segment of the total number of students who sat for the

Scholarship Examination and the fact that the Commissioner General of Examinations had received a large number of requests that the Examination be not re-administered.

- 94) Responding to the Judgment in *Tanvi Sarwal v. Central Board of Secondary Education* (Supreme Court of India) cited by President Counsel Mr. Sanjeeva Jayawardhana, in support of his contention that, where the integrity of a public examination has been compromised it is imperative that the examination be quashed and a fresh examination be held, the learned Solicitor General submitted that the said Judgment must be viewed in the context of the serious breach that had occurred in the examination complained of in that case, and other unique factors such as the undue advantage secured by a large segment of candidates. He submitted that the facts and circumstances of this case vastly differ from those of that case.
- 95) The learned Solicitor General cited the case of *Vanshika Yadav v. Union of India* [WP (Civil) No. 335 of 2024, SC Minutes 02.08.2024] wherein the Supreme Court of India had noted that “*the Court cannot also be unmindful of the social consequences involving such a large body of students who have studied for the examination, undertaken costs and expenses and would have to undergo the rigors of a fresh examination if one were to be ordered by the Court. Balancing these considerations require a careful assessment of the extent and impact of the breach on the integrity of the examination process, ensuring fairness to all stakeholders*”. In considering to order a fresh examination (which it did not in that case) the Supreme Court of India had propounded three guiding principles to be taken into consideration. They being (a) whether there had been a systemic breach which undermines the overall integrity of the examination process, (b) whether the breach was of such nature that it thereby compromised the sanctity and the fairness of the entire examination, and (c) whether it was feasible to isolate the beneficiaries of the alleged fraud from the unaffected candidates. Learned Solicitor General submitted that the Supreme Court of India has held that, to justify the re-administration of an examination, it was necessary to establish that the breach was systemic and of such magnitude so as to vitiate the examination process in its entirety. Learned Solicitor General submitted that the application of these guidelines would point towards the direction that in the circumstances of this case, a re-administration of Part I of the Scholarship Examination would in no way be justifiable or appropriate.

(IV) Decision making authority and the lawfulness of the impugned decision (solution of awarding free marks for the compromised questions) -

96) Citing sections 2(1) and 4(1) of the Public Examinations Act, learned President's Counsel Mr. Saliya Pieris submitted that it was the Commissioner General of Examinations and his officers who were responsible for the administration of the provisions of the Public Examinations Act and to organise and conduct among others the Grade 5 Scholarship Examination. Therefore, the sole decision-making authority who was required by law to take a decision regarding the compromising of the integrity of Part I of the Examination was the 1st Respondent - Commissioner General of Examinations. He emphasised that any decision regarding a breach in the secrecy of questions in a question paper should have been taken by him. The CGE has not produced any documentary evidence that it was he who took the impugned decision to award full marks for all 3 compromised (leaked) questions. Learned counsel submitted that the CGE had therefore abdicated his duty of taking a decision on the matter.

97) Learned President's Counsel emphasised that, in terms of the Act, the Minister in-charge of the subject (Minister of Education) did not have any legal authority to interfere in the decision-making process or to take decisions. He submitted that the statutory arrangement contained in the Public Examinations Act was critically important so as to ensure the independence of the office of the Commissioner General and the integrity of Examinations conducted under and in terms of the Public Examinations Act.

98) In this regard President's Counsel Mr. Jayawardana submitted that "*... the Secretary and the Minister, effectively usurped and emasculated, nothing less than the substantive responsibility and authority of the custodian and dispenser of competitive examinations in terms of the enabling Act, which is the Commissioner General of Examinations*". Reiterating the submission of Mr. Pieris with even more vigor Mr. Jayawardana submitted that, "*neither the Minister of Education nor the Secretary, Ministry of Education, have any authority or power, in terms of the Public Examinations Act, and the only power of the Minister is to issue Regulations ... No other substantive power lie within the remit of the Minister or the Secretary, to assume ascendancy, in providing a so called purported, hurried solution, which is inextricable from what is most obviously, a reckless resort to what the Minister perceived as perhaps a popular political solution to this burning issue ...*".

99) Mr. Jayawardana also submitted that the purported decision (as according to the learned Solicitor General contained in 'R10') was in fact not a decision at all. He

submitted that it merely conveys information that a ‘recommendation’ to award free marks for the 3 questions in issue has been submitted to the Minister. Furthermore, it has been signed by the Secretary to the Ministry of Education and the Commissioner General of Examination. He thus submitted that the CGE being the sole decision-making authority in terms of the governing law, had abdicated his duty to both the Secretary and to the Minister. He submitted that in this matter, there is no final decision by the Commissioner General of Examinations.

100) Modifying the submission made by the learned Solicitor General during the hearing held on 18th December 2024 (proceedings of the day at approximately 2.20 p.m.) that there was no formal document containing the final decision taken by the Commissioner General of Examinations that full marks should be awarded to the three questions in issue in Part I, in his post-argument written submissions (at page 17) citing document “R10” (letter dated 29th September 2024 addressed to the 5th Respondent - Honourable Prime Minister signed jointly by the 6th Respondent – the Secretary to the Ministry of Education and the 1st Respondent - Commissioner General of Examinations), he submitted that, “R10” is in effect the decision of the CGE. Furthermore, at page 26 of the said submissions, he has submitted that “*the decision of the 1st Respondent which was made public through a press conference on 14th October 2024 may not take the form of a written decision, ...*”. He also submitted that the final decision of the Commissioner General was made known to the public at a press conference held on 14th October 2024.

(V) Justiciability and therefore the reviewability of the decision to award full marks for the compromised three questions (the ‘solution’) –

101) President’s Counsel Mr. Saliya Peiris submitted that the solution to award full marks for the three compromised questions was a ‘justiciable decision’ and thus reviewable in these proceedings. He cited the following reasons in support of his submission:

- i. The decision relating to the ‘solution’ had not been taken by the decision-making authority recognised by law. In this instance, the decision-making power had been usurped by the Prime Minister (in her capacity as the Minister of Education) and by the Secretary to the Ministry of Education.
- ii. The decision (the ‘solution’) had been taken without due consideration of all the relevant facts, including the impact on the honest students who had correctly answered all three, two or one compromised questions. Thus, the decision is unreasonable.

- iii. By the identified solution, two distinct categories of student candidates (i.e. those who benefitted from the leak and those who did not benefit from the leaked questions) have been 'clubbed together', is therefore discriminatory and thus, the fundamental right to equality has been breached.
- iv. The award of full marks for the 3 questions is not a 'fair solution' as, in the instant situation every mark is of critical importance, whereas through the identified solution all students irrespective of whether or not they have benefitted from the leaked model questions and independent of their own performance is to receive 7.5 marks.
- v. None of the committees appointed to consider the matter had addressed their mind to the fact that the 13th Respondent who leaked a minimum of 3 questions had access to all the finalised questions, and thus, there was a distinct possibility of all questions in the finalised question paper having been leaked. The identified solution does not take into account that eventuality.
- vi. "R7" indicates that conducting the entire examination afresh is the only viable solution.

In view of the foregoing reasons, the position of the learned President's Counsel was that the impugned decision (the 'solution') was a justiciable decision, as it could be audited against legal standards. He also submitted that the impugned decision is not only *ultra vires* (in the traditional sense) it was unlawful, as it had been taken without lawful authority, was contrary to law, unreasonable, irrational and discriminatory.

- 102) The learned Solicitor General submitted that the Public Examinations Act does not specifically provide for a statutory solution to the issue at hand. He further submitted that the legislature in its own wisdom had provided 'operational flexibility' to the authorities to adapt to the circumstances of a given case and take a suitable decision.
- 103) He submitted that the CGE cannot in any event be blamed for the utterly irresponsible conduct of the 13th Respondent. Furthermore, in terms of the law, it would not be possible to impose any vicarious liability on the CGE for the breach that had occurred.
- 104) Learned Solicitor General submitted that the Petitioners have failed to establish that the solution identified by the authorities to award free marks for the compromised three questions would violate Article 12(1) of the Constitution.

105) The learned Solicitor General submitted that the CGE had in fact taken a decision and the absence of a written decision on the day it was taken cannot now be made an issue by the Petitioners, when in fact they made no such complaint in their Petitions. He further submitted that while the Public Examinations Act bestows powers on the Commissioner of Examinations to take such decisions, the Minister of Education clearly has overall 'superintendence' over the manner in which the provisions of the Act may be applied. He submitted that the supportive role played by the Honourable Prime Minister / Minister of Education cannot be faulted and should be in fact applauded. The role played by both the Minister of Education and the Secretary to the Ministry cannot be classified as either 'intervention' or 'usurpation' of the powers of the Commissioner of Examinations. Their role he submitted 'complemented' the efforts of the Commissioner of Examinations.

106) He also submitted that the CGE did not act in an arbitrary manner, and that he had taken into consideration all relevant factors while keeping in mind the overarching guiding principles of protecting the best interests of children. It was a well-considered decision taken in a transparent manner. In these circumstances, learned Solicitor General submitted that the impugned solution had not infringed the fundamental right to equality contained in Article 12(1) of the Constitution.

Analysis and findings of Court

I. The Grade 5 Scholarship Examination

107) From paragraph 13 to 28 of this Judgment, I have introduced the Grade 5 Scholarship Examination conducted annually by the Department of Examinations, and highlighted its importance towards selecting students who excel at the examination -

- (a) to gain admission to popular public schools with adequate human, material and financial resources to provide a sound secondary education to its students, to which schools there is a very high demand to gain admission, and
- (b) to provide bursaries to needy students to facilitate their successful passage through secondary education.

108) Since, particularly within public sector educational institutions there is a considerable disparity in standards of education and requisite resources, this Court

has in those paragraphs noted the importance of conducting this examination for the purpose of selecting the best of the students to gain entrance to ‘popular public schools’ (which is a term commonly used for schools which are perceived as providing good quality education and therefore there is a considerable clamour to gain entry to).

109) I have explained and noted in those paragraphs the extremely competitive nature of this scholarship examination, and the tremendous efforts which both students and their parents take, to ensure that student candidates succeed at scoring very high marks.

110) Given the prevailing unfortunate ground situation in this country relating to considerable disparities in the standard of education and the large number of students from underprivileged and impoverished backgrounds (aggravated by a doubling of the poverty rates between 2020 and 2022 pushing around 25 percent of those who were previously above the poverty line, below the poverty line, occasioned due to the recent economic disaster), the importance of this scholarship examination cannot be underscored enough. In this backdrop, I must express agreement with the submissions of learned counsel for the Petitioners that, the outcome of this examination is of critical importance to a very large percentage of student candidates, and metaphorically speaking, these children face a ‘*make or break situation*’ which would have a bearing on their entire future. In the same breadth and for the same reasons, I am compelled to disagree with the submission of the learned Solicitor General, that some students and their parents have ‘over-emphasised’ the importance and critical value’ of this examination.

111) **In these circumstances, I cannot but underscore the importance of ensuring that the Grade 5 Scholarship Examination itself and the assessment of the performance of student candidates who sit for the examination must be carried out to the highest possible standards of integrity. There cannot be any deviation from that requirement.**

112) Particularly in view of the submission made by the learned Solicitor General that the Government appears to be considering the option of abolishing this Scholarship Examination and implementing an alternate scheme (primarily with the objective of ensuring that students are not psychologically harmed (traumatised) by requiring them to train themselves to sit for this highly competitive examination), I must place

on record the importance of ensuring that the alternative to be developed and implemented must ensure the following:

- (a) that it is capable of objectively selecting the best (meritocracy based) students to gain admission to popular public schools (thus, being rationally aimed at and capable of achieving the present objectives of conducting the Scholarship Examination),
- (b) that all students are equally placed and could participate in the selection process in a fair manner and on an equal footing,
- (c) that the new scheme redresses the negative features of the existing scheme,
- (d) that the new scheme meets with a very high standard of objectivity and integrity, so as to eliminate room for corruption, nepotism, favoritism, and does not merely protect the interests of the privileged and affluent social classes, and
- (e) that the new scheme be of such nature that assessment of the performance of students could be carried out objectively.

A derogation from these standards is likely to attract criticism on the footing that the new scheme impinges certain values embodied in the Constitution.

II. The breach in integrity of the question papers and its legal effect

113) The breach in the integrity of the Grade 5 Scholarship Examination held on 15th September 2024 complained of by the Petitioners and the response of the authorities to the allegations, can be separated into the following categories:

- i. Advance notice given by certain persons to some of the student candidates relating to questions Nos. 5, 13, and 27 of Part I of the Scholarship Examination Paper by the inclusion of those questions into a 'model examination paper' containing 16 questions and the circulation / sharing of such paper or images thereof primarily via a *WhatsApp* group. – The authorities admit that those three questions have been leaked. The impugned solution to the problem has also been developed on that footing.
- ii. Advance notice given by certain persons to some of the student candidates relating to questions Nos. 1, 20, 21 and 32 of Part I of the Scholarship Examination Paper by the inclusion of those questions into a 'model examination paper' (the same paper as that referred to in the above category)

- containing 16 questions and its circulation / shared primarily via a *WhatsApp* group. – The authorities contest this position and have submitted that those questions are significantly dissimilar to questions Nos. 15, 14, 13 and 11 & 12 or any other questions contained in the ‘model examination paper’. Thus, the authorities deny this allegation.
- iii. Advance notice given by a certain person to some student candidates relating to question No. 60 of Paper II of the Scholarship Examination Paper by teaching that question to some student candidates at an ‘online class’. – The authorities contest this position altogether and deny the allegation that question No. 60 of Part I had been compromised by its leak.
- iv. The possibility of the 13th Respondent – I.G.S. Premathilake having leaked other questions too, of Part I of the finalised Examination Paper, as he being the miscreant who was responsible for the leak of the 3 questions referred to in the first category. – The authorities have contested this position, and have submitted that there is no evidential proof of such further leak.
- 114) In addition to the ‘expert opinion’ contained in the two Reports relied upon by the learned Solicitor General that questions Nos. 1, 20, 21, and 32 are significantly dissimilar to questions Nos. 15, 14, 13 and 11 & 12 of the ‘model examination paper’ referred to above, this Court also had the benefit of examining the two sets of questions based on a side-by-side comparison and a studying of their content. It is necessary to place on record that this Court could not observe any striking similarity in the four pairs of questions claimed by the Petitioners, as having the possibility of being leaked. Thus, there was no basis for this Court to have taken judicial notice of the alleged breach in integrity of the questions falling into this category. Therefore, this Judgment proceeds on the footing that category ‘ii’ above does not amount to a breach in the integrity of Part I of the Scholarship Examination Paper.
- 115) The complaint regarding the alleged leak of Question No. 60 of Part II of the Scholarship Examination Paper has been made for the first time to this Court. Those who entertain that view have not complained to the authorities and accordingly no investigation has been conducted in that regard. Furthermore, the related Petitioners have not presented to this Court reliable evidence in support of their allegation. Thus, this Judgment also proceeds on the footing that category ‘iii’ above does not amount to a breach in the integrity of Part II of the Scholarship Examination Paper.

116) As regards category 'iv', this Court accepts the submission made by learned President's Counsel Mr. Saliya Pieris, that since it is evident that the 13th Respondent - I.G.S. Premathilake is a miscreant of the highest order who had leaked 3 questions of Paper I of the examination paper, and since he was privy to the full extent of the finalised Examination Paper I, there is a 'possibility' in his having leaked further questions. I must observe that it is a well-founded suspicion. An unscrupulous individual who leaked 3 questions, could have (should he have had the opportunity) leaked other questions as well. However, it is necessary to note that, unlike the questions he himself drafted, he did not have access in written / typed form to the questions contributed by the other paper setters. (According to the Solicitor General, paper setters are not permitted to take their mobile phones into the room inside which deliberations take place and the question paper is finalised. Furthermore, paper setters are not permitted to copy down the finalised questions included in the settled question paper.) Furthermore, there is no evidence before this Court that the 13th Respondent - I.G.S. Premathilake leaked any of the questions which were in the finalised Question Paper I which were not originally drafted by him. Furthermore, from the investigation conducted by the CID, it appears inferentially that, what the 13th Respondent had done was to have passed on to a third party (probably to 6th Respondent in SC/FR 291/2024 - Chaminda Kumara Ilangasekara) all 7 questions which he himself drafted for inclusion in Paper I. That is evident by all 7 questions (including the 3 that were selected for inclusion in Paper I) being incorporated into the 'model examination paper' containing handwritten endorsements by Chaminda Kumara Ilangasekara and shared among certain student candidates via a *WhatsApp* group. Furthermore, the criminal investigation conducted by the CID thus far does not reveal the compromising of any additional questions. Therefore, that Premathilake leaked other questions too remains a 'suspicion' as opposed to a 'proven or admitted fact' (unlike the leak of the questions falling within category 'i'). In the circumstances, it is the finding of this Court that the allegation that certain other questions contained in Part I of the Question Paper had been leaked remains only as a ground of 'reasonable suspicion' and a 'possibility', and not a 'proven or admitted fact' based upon which this Court could engage in the adjudication of the matter presented to this Court. In these circumstances, this Judgment also proceeds on the footing that category 'iv' above does not amount to a breach in the integrity of Part I of the Scholarship Examination Paper.

- 117) In view of the foregoing, **this Judgment will proceed on the footing that the leak of questions of the Grade 5 Scholarship Examination was confined to the three (3) questions of Part I of the Scholarship Examination Paper which fall within category 'i' listed above.**
- 118) A careful consideration of the provisions of the Public Examinations Act, No. 25 of 1968 as amended by Law No. 15 of 1976 reveals so evidently that this law which governs the conduct of all 'public examinations' conducted by the Department of Examinations under the stewardship of the Commissioner of Examinations (Commissioner General of Examinations) is founded upon the compelling need to ensure the integrity of all such examinations. All provisions of this law have been drafted so as to optimally ensure that public examinations are conducted to a high standard of integrity, by which the law presupposes that there would be fairness and equal opportunity provided to all candidates to face the examination and sit and compete on an equal footing.
- 119) Conduct that has been prohibited in terms of this law has been classified as 'offences'. Such prohibitions have been designed to ensure that the contents of examination papers once settled (finalised) remains secret up until the lapse of 30 minutes following the commencement of the examination, and are also aimed at ensuring a high standard of integrity among officials and candidates. While there is no evidence regarding the date and time on which question paper I was finalised and thus 'set', it is clear that the end of this time period occurred on 15th September 2024 at 11.45 a.m. (i.e. 30 minutes after question Paper I commenced at 11.15 a.m.). During this interim period, for the purposes of this Act, the settled examination paper is classified as a 'secret document' [*vide* section 6(1)], and any person who fraudulently or dishonestly delivers a secret document or part thereof, or communicates any information relating to the contents of a secret document or part thereof, to any other person who is not a person to whom he is authorised to deliver such document or communicate such information, shall be guilty of an offence [*vide* section 6(2)].
- 120) In these circumstances, a general proposition of law that must be recognised is that the maintenance of the integrity of a public examination is a mandatory legal requirement and is a *sine-qua-non* of any public examination conducted in this country. A breach of such integrity would be a derogation from this imperative legal standard enshrined in the governing law. Additionally, such a standard is also recognisable from the general principles of law applicable to any public examination.

121) Admittedly, at the Grade 5 Scholarship Examination held on 15th September 2024, the afore-stated legal standard had been violated. The circumstances under which the breach in the requisite standard of integrity occurred does not serve as an excuse recognised by law for the violation. Therefore, this Court concludes that due to the compromising of three questions of Part I of the examination occasioned by the criminal conduct of I.G.S. Premathilake, **Paper I of the Grade 5 Scholarship Examination held on 15th September 2024 had been conducted in a manner that violates the law.** A violation of the law is an insult on the Rule of law. It is trite law that a violation of the Rule of law violates the principle of equality and thus infringes the fundamental right to equality guaranteed by Article 12 of the Constitution. Therefore, this Court concludes that, **by the breach of the integrity (confidentiality being compromised by a leak) of three (3) questions of Part I of the Grade 5 Scholarship Examination occasioned by the criminal conduct of the 13th Respondent - I.G.S. Premathilake and the 6th Respondent in SC/ FR 291/ 2024 and the 9th Respondent in SC/ FR 294/ 2024 - Chaminda Kumara Ilangasekara, the fundamental right to equality and the protection of the Rule of law guaranteed by Article 12(1) of the Constitution had been infringed.** The victims of such infringement were the student candidates who sat for the afore-stated examination and did not benefit from the afore-stated 'leak' and constitutes a segment of children who were thereby accorded differential treatment against the law. Nevertheless, in the present case, the student candidates who did not receive the benefit of the 'leak' were not founded upon reasonable classification as permitted by the principle of equality, but were accorded differential treatment as a violation of the rule of law. This has resulted in an infringement of the right to equality of such candidates. Therefore, this Court also concludes that the student candidates among the Petitioners who have claimed (without serious contest by the Respondents) not to have been privy to the compromised Examination Paper I and thus did not benefit from the leak, were among the large number of child victims of such infringement.

III. Solution adopted by the authorities, its legal effect and the alternative

122) The authorities have identified three possible solutions for the problem that has arisen. They are -

- i. removing the compromised test items from scoring,
- ii. awarding free marks for all the candidates for the compromised questions, and
- iii. re-administering a new test.

[As per the terminology contained in "R7".]

- 123) It is the second of these three solutions that have been selected by the authorities for implementation. That is for the purpose of redressing the problem that has arisen due to the compromising of 3 questions contained in Part I of the Grade 5 Scholarship Examination.
- 124) It is the third of these three possible solutions, which the Petitioners are urging be implemented. The Petitioners have urged that this Court makes an order annulling the decision to implement the solution of awarding free marks for the three compromised questions, and in the alternative direct that the authorities conduct a fresh examination to replace the compromised question paper (Paper I).
- 125) This Court notes that the afore-stated three possible solutions are the only conceivable solutions that exist in the real world to redress the problem that has arisen. Learned counsel for all parties agreed with this view. This Court has also observed that, all three possible solutions attract to them, both positive and negative features.
- 126) It must be stated and appreciated that, within the Department of Examinations, both the possible solutions and these positive and negative features have been identified by three Deputy Commissioners of Examinations, they being, Mr. W.V.D.S.M. Warakagoda [Deputy Commissioner of Examinations (Assessment and Evaluations Reforms Branch)], Mr. K.T.D. Wimalasiri [Deputy Commissioner of Examinations (Assessment and Evaluations Branch)], and Mr. K.G.C.J. Bandara [Deputy Commissioner of Examinations (Evaluations Branch – School Exams)].
- 127) This Court noted with pleasure the expertise they seem to possess and the objectivity with which they appear to have undertaken and carried out the task entrusted to them by the Commissioner General of Examinations on 18th September 2024. It is necessary to place on record that the task assigned to this Committee had been to *‘thoroughly study, assess and provide recommendations to solve the problem’*.
- 128) The Report of these three Deputy Commissioners (“R7”) dated 27th September 2024 reveals a considerable amount of details, including the procedure followed by the Committee and examine the problem, identify possible solutions and formulate their recommendations.

129) It is necessary to appreciate the fact that none of the counsel who appeared for the Petitioners criticised “R7” on any of the following grounds:

- i. The expertise of the three Deputy Commissioners.
- ii. The procedure adopted and followed when studying the problem that had arisen and identifying possible solutions.
- iii. The objectivity with which the study had been conducted.
- iv. The diligence exercised when considering the several options.
- v. The listed ‘pros’ and ‘cons’ of each of the three solutions.
- vi. The placement of the three possible solutions on an equal footing.

130) In the circumstances, the difference of opinion between the solution adopted by the authorities and the solution which the Petitioners urge that the authorities implement is simply based on a difference of opinion.

131) I shall not include in this Judgment the positive and negative features of each of the three possible solutions the three Deputy Commissioners have meticulously documented in their Report. I refrain from doing so, as it is unnecessary.

132) None of the learned counsel for the Petitioners complained to this Court that the identification of the three solutions by the committee of three Deputy Commissioners had been done in an arbitrary manner. Nor was it submitted that the three solutions *per se* were unreasonable.

133) Be that as it may, it is necessary to point out that, in view of the observations of this Court contained in paragraph 129 of this judgment, it appears clearly that, subject to what is stated in the following section of this Judgment, the Petitioners have in fact challenged the selected solution, founded only upon the ‘merits’ and ‘de-merits’ of the three possible solutions. In view of the observations of this Court regarding “R7”, it would be seen that, it is not possible to audit the three options (the three solutions recommended by the Deputy Commissioners) which the Commissioner General of Examinations could have rightly considered, as against legal standards. The merits and de-merits of each identified solution must remain a matter for the experts. Based on an objective and diligent consideration of such merits and de-merits of each solution, selecting one solution should be a matter for the Commissioner General of Examinations to decide on and for him alone. In the case of *Women and Media Collective v The Attorney General* [SC FR 446/2019, SC Minutes of 06.06.2024] this Court has explained in detail the concept of ‘justiciability’ and its inter-relationship

with the concept of 'judicial reviewability'. This Court has observed that, certain decisions though impugned before this Court or the Court of Appeal, would not be judicially reviewable, due to the nature of the impugned decision being 'non-justiciable'. In that regard, this Court has noted that, "*there may be certain decisions that cannot be subject to judicial scrutiny founded only upon legal standards and principles (provided conditions precedent to the exercise of the power have been satisfied, the decision concerned is procedurally intra vires, decided upon objectively, is not unreasonable or arbitrary)*". In that judgment, there is a detailed description of the very limited circumstances in which this Court would conclude that a particular impugned decision is not reviewable, as the impugned decision is non-justiciable. Particularly due to implications on the Rule of Law by this Court concluding that an impugned decision is not reviewable, this Court would normally be hesitant to arrive at a finding that a particular decision is not justiciable. However, in my view, it appears clearly that this is one of those very limited situations where this Court should not review the impugned decision on the afore-stated premise, i.e. that the impugned decision is non-justiciable.

134) Furthermore, Mr. Saliya Pieris challenged the selected solution of awarding free marks for the three compromised questions on the footing that it was discriminatory and violated the fundamental right to equality. The position Mr. Pieris articulated was that, by the implementation of the identified solution, two distinct categories of student candidates, namely (i) those who did not benefit from the leak and (ii) those who benefitted from the leak, would be treated equally. He also advanced the proposition that, further distinct categories of student candidates, such as those who did not benefit from the leak, but in the ordinary course would have only correctly answered 1 or 2 questions only, will (through the application of the selected solution) receive the same marks as those who on their own correctly answered all 3 questions correctly. He submitted that, this violated the 'classification doctrine' enshrined in the right to equality contained in Article 12.

135) Indeed, it is trite law recognised consistently by this Court, that equals must be treated equally. Equals cannot be classified and treated unequally. Classification unless founded upon intelligible criteria to facilitate a lawful objective and the intended purpose for which power has been conferred, violates the right to equality and therefore Article 12. However, as held by this Court on numerous occasions, equality, which is a concept based on the firm foundation of the Rule of Law, does not totally forbid classification. However, such classification must be 'reasonable' in the

eyes of the law. A classification, which is (a) not arbitrary, (b) is reasonable, and (c) is otherwise lawful, can be regarded as being valid and permissible and as not violating the fundamental right to equality. That would be if such classification is founded upon intelligible and reasonable differentia aimed at facilitating the purpose for which the power has been conferred and is to be exercised. Furthermore, there should be a reasonable and rational nexus between the purpose (object) that is sought to be achieved and the basis of the classification.

136) As Mr. Peiris pointed out, indeed the selected solution would result in several different groups of student candidates being treated equally. Thus, the selected solution in isolation from the other two solutions would certainly infringe the right to equality. However, as all learned counsel agreed, **the three solutions identified by the experts are the only conceivable solutions to the problem that has arisen**. Furthermore, the implementation of the other two solutions would also result in two or more distinct groups of student candidates being pooled into one group and being treated equally. Thus, the implementation of those two solutions would also violate the right to equality. If so, what other option would there be? Therefore, it would be seen that, in this instance, the **doctrine of necessity** would justify the selection of one out of the three solutions (options) and enforcing such solution to redress the problem that has arisen.

137) **In view of the foregoing, based on the merits, I refrain from arriving at a finding on the legality of the solution adopted by the authorities for implementation, namely the awarding of free marks for the three compromised questions in Part I of the Grade 5 Scholarship Examination. However, I hold that the selected solution of awarding free marks for the three compromised questions does violate the right to equality and therefore does *ipso facto* infringe Article 12(1) of the Constitution. Nevertheless, its implementation is not unlawful, due to the application of the doctrine of necessity.**

IV. Decision-making pertaining to the identified solution

138) In terms of section 4(1) of the Act, the Commissioner of Examinations shall have the power to *inter-alia* conduct 'General Education Examinations' (It is not in dispute that the Grade 5 Scholarship Examination falls into this category.). Towards this end, by section 2(1) of the Act, the Commissioner of Examinations has been placed in-charge of and is responsible for the administration of the Act. The governing law does not prescribe methodology to be adopted in the setting of question papers and *modus operandi* to be adopted to ensure that the confidentiality of settled questions and

question papers do not leak and become compromised prior to the lapse of 30 minutes following the commencement of the relevant examination paper. Understandably, the development of appropriate procedures and schemes as well as strategies to prevent any breach in confidentiality of the setting of question papers and for the maintenance of its secrecy until 30 minutes have passed from the commencement of the examination, is the responsibility of the Head of the Department of Examinations being the Commissioner of Examinations (presently, administratively designated as the 'Commissioner General of Examinations'). As it would not be possible for the Commissioner of Examinations to take all necessary measures by himself, section 2(1) of the Act also recognises the duty conferred on 'other officers' of the Department of Examinations to be responsible for the administration of the Act.

139) The Act does not prescribe the procedure to be adopted when an instance of a breach in the integrity of an examination paper is brought to the attention of the CGE. Section 22 of the Act empowers the Minister to make Regulations for the purpose of giving effect to the principles and provisions of the Act, and in particular for matters in respect of which Regulations are required. Upon inquiry being made by this Court, the learned Solicitor General informed this Court that no such Regulations have been made thus far. He submitted that the absence of more detailed provisions in the Act as well as the absence of Regulations was for the purpose of providing for 'operational flexibility' when responding to different situations that may arise. While it is not possible to reject this proposition, it appears in my view to be prudent that Regulations be made to provide for a flexible, yet decisive and well-founded objective procedure to be adopted, to regulate responding to situations such as complaints being received pertaining to alleged breaches in the integrity of an Examination.

140) The Act also does not expressly provide for the Commissioner of Examinations being vested with any of the following powers:

- (a) Re-scheduling the conduct of an Examination that could not be conducted on the scheduled day at one or more examination centres due to reasons beyond the control of the authorities, such as adverse weather conditions or due to natural or man-made mass disasters,
- (b) Processing and implementing requests for re-correction of answer scripts,
- (c) Action to be taken with regard to misleading or wrong questions or questions to which there is no correct answer being included in an examination paper.
- (d) The manner in which the Commissioner of Examinations should respond to a situation such as the instant one, i.e. (i) receipt of complaints or information that

the integrity of an examination question paper having been breached due to one or more of the questions being leaked during the period when the contents of the examination paper were required to be 'secret', (ii) how to investigate into such complaints, and (iii) if such complaints / information are found to be well-founded, designing, adopting and implementing a decision containing a 'solution' to resolve the issue that has arisen.

It is beyond debate that, these are powers the Commissioner of Examinations has been impliedly vested with, arising out of the general power vested in him by sections 2(1) and 4(1) of the Act.

141) All counsel were in agreement with each other, and this Court too concurs with them, that it is the Commissioner of Examinations who is vested with the power to decide on the designing or causing the designing of possible solutions to a problem that has arisen (such as the one relating to the breach in the confidentiality of the 3 questions of Part I of the Grade 5 Scholarship Examination), deciding on a solution to be implemented, and the implementation of the identified solution.

142) It is also to be noted that, in terms of section 3 of the Act, the Minister is empowered to constitute in terms of Regulations that may be made in that regard, *inter alia* a 'Schools Examinations Advisory Committee' or any other advisory committee. This Court was not informed of the establishment of such an advisory committee. Thus, neither of the two panels constituted by the Honourable Prime Minister would fall into this category of committees.

143) In terms of the Public Examinations Act as well as other written law, neither the Minister nor the Secretary to the Ministry of Education (under which the Department of Examinations is administratively assigned) has been vested with power to participate in the afore-stated decision-making processes pertaining to the identification of a solution to a problem pertaining to the compromising of the integrity of an examination paper, taking a decision thereon, or implementing such decision.

144) However, as pointed out by the learned Solicitor General, it is undeniable that both the Minister and the Secretary to the Ministry of Education would indeed have general administrative superintendence over the Commissioner General of Examinations. However, in the view of this Court, that would not include the power

to participate in the decision-making process or influence thereon. In fact, in addition to general administrative superintendence, this Court observes that in terms of Article 52(2) of the Constitution, the Secretary to the Ministry has, subject to the direction and control of her Minister, the power to exercise supervision over the departments of government or other institutions in-charge of her Minister. However, it is important to note that as conceded by the learned Solicitor General, the Public Examinations Act does not empower the Minister to provide either general or case specific directions to the Commissioner of Examinations. In the circumstances, it is the view of this Court that **both the provisions of the Constitution as well as the provisions of the Public Examinations Act would not empower either the Minister or the Secretary to the Ministry to participate in the decision-making process, issue directions to the Commissioner of Examinations, assume to themselves the decision-making power, or influence the process in a manner that would take away, curtail or inhibit the discretionary authority vested in the Commissioner of Examinations by the Public Examinations Act. This does not mean that the public functionary cannot engage in a process of consultation with the Minister or the Secretary, subject to the important caveat that the final decision must always be that of the public functionary who is required by law to take such decision.**

145) **When power is vested by law either directly or indirectly on a public functionary to perform a function for the purpose of achieving a particular objective, unless otherwise specifically stated, that public functionary must take independent decisions by himself and no one else may decide on his behalf. Such public functionary being assisted in the decision-making process and being guided by expert opinion is not a violation of the law. Nor would the law be violated, by supervising the functioning of the public functionary or exercising superintendence, should such power (as in the instant case) be vested in a higher authority. However, both political and administrative functionaries (such as the Minister or the Secretary to the relevant Ministry) who exercise supervisory authority or superintendence over such public functionary shall not unless specifically authorised by law, in any manner influence the decision-making process or the decision itself adopted by the public functionary on whom the governing law has conferred legal authority to take decisions.**

146) In view of the foregoing, the Minister of Education or the Secretary to the Ministry of Education must restrict their influence over the decision-making process so that the Commissioner of Examinations retains his independence to perform the legal duty of decision-making and in that regard being able to independently exercise discretion.

Therefore, **neither the authority vested in the Minister and the Secretary to engage in superintendence, nor the authority to supervise the functions of the Commissioner of Examinations would include legal authority to usurp the power vested in the Commissioner of Examinations. Similarly, the Commissioner of Examinations cannot abdicate expressly or impliedly either to the Minister or to the Secretary, the decision-making authority vested in him by law.**

147) This places the public functionary (statutory authority concerned – in this instance the Commissioner General of Examinations) in a delicate situation. On the one hand, he must act independently and exercise discretion and arrive at a decision by himself for the purposes for which the power to decide has been vested in him. On the other-hand, he must be amenable to superintendence and supervision, by senior officers who possess such powers of superintendence and supervision. However, being amenable to superintendence and supervision or engaging in a consultative process, must not deprive him of his duty in terms of the law to be independent, exercise discretionary authority, and function in terms of the authority vested in him by law. The public functionary must not reduce his role to being a perfunctory endorser of what his superiors would wish that he does.

148) It is seen from the narrative provided to this Court by the 1st Respondent - Commissioner General of Examinations that both the 5th Respondent - Honourable Prime Minister (in her capacity as the Minister of Education) and the 6th Respondent – Secretary to the Ministry of Education have made prompt inquiries from the CGE regarding the complaints / information received regarding the ‘leak’ of certain questions. That would indeed be part of supervision and superintendence expected from superior authorities such as the Minister in-charge and the Secretary to the Ministry. In fact, being responsive to the situation that had arisen, expressing concern, showing interest regarding action being taken, and supporting the CGE to resolve the problem that had cropped up, is not only a part of good and effective leadership and management, it is a component of good governance, as well. Thus, such responsiveness and interest shown in this matter by both the Honourable Prime Minister and the Secretary to the Ministry, is indeed laudable.

149) However, it is necessary to examine what exactly had happened in this instance. The sequence of events relating to the decision-making process can albeit briefly, be listed in the following manner:

- i. 15th September 2024 - The CGE started receiving complaints regarding the leak.
- ii. 17th September 2024 - The CGE initiated an investigation into the matter to be carried out by the Investigations Branch of the Department (*vide* paragraph No. 19 of Affidavit dated 05th November 2024).
- iii. 17th September 2024 - The CGE convened the Controlled Marking Panel and discussed the matter.
- iv. 17th September 2024 - Following discussions with the Controlled Marking Panel, out of “*abundance of caution*”, the CGE decided to **exclude the allegedly compromised three questions from the scoring process**. Thereafter, the CGE issued a public notice to that effect. (Upon inquiry being made by this Court the learned Solicitor General submitted that this decision has not been documented by the CGE in any official record.)
- v. 18th September 2024 - The Report of the Controlled Marking Panel (“R5”) was made available to the CGE. That Report contained a recommendation that either (a) free marks be awarded to answers given by student candidates corresponding to questions Nos. 5, 13, and 29 (The reference to ‘29’ is admittedly an error, and should be a reference to ‘27’.) or (b) to delete all three questions from the marking process and award marks out of 37 and not 40.
- vi. 18th September 2024 - The CGE appointed an ‘expert committee’ comprising of three Deputy Commissioners of Examinations to conduct a thorough assessment of options that are available.
- vii. 19th September 2024 - The interim report (“R6”) of the Investigations Branch of the Department was received by the CGE.
- viii. 26th September 2024 - A meeting regarding this issue was convened by the Honourable Prime Minister/ Minister of Education. The CGE was instructed to submit a “*report on recommended remedial action to be taken with regard to resolving the issue*”.

- ix. 27th September 2024 - The expert committee (three Deputy Commissioners) appointed by the CGE submitted its Report (“R7” and its attachment). The committee identified three potential solutions to address the situation that had arisen. The CGE did not take a decision based on “R7”.

On the same day the CGE submitted the expert committee report (“R8”) to the Honourable Prime Minister via the Secretary to the Ministry of Education.

- x. 28th September 2024 - The Honourable Prime Minister appointed a seven-member expert committee (“R9”) and it appears that by the 29th September 2024 the individual views of those experts were available.
- xi. 29th September 2024 - Having considered the views of the seven experts appointed by the Honourable Prime Minister, a Report (“R10” and its attachment) had been presented by the 1st Respondent (CGE) and the 6th Respondent Secretary to the Ministry to the Honourable Prime Minister. This Report of the two Respondents contains an endorsement of the recommendation made by the experts (appointed by the Honourable Prime Minister) to implement the option of giving free marks to the three compromised questions. They have also recommended the immediate implementation of the proposed solution to ensure minimal disruption.
- xii. 29th September 2024 – The Secretary to the Ministry of Education and the CGE have jointly subscribed to a statement (“P15A”) containing steps taken thus far including internal investigations conducted, complaint to the CID, the analytical report by the Department of Examinations (“R7”) and the appointment of experts identified by the Honourable Prime Minister. The joint statement ends with the following:

*“The expert committee has advised against holding a repeat examination, citing the potential for stress and psychological harm to the children who are around 10 years of age. Instead, **they have recommended awarding full marks for the three leaked questions** for all students who sat for the examination as the most appropriate course of action. In line with these recommendations **the Department of Examinations has decided to adopt this solution.** The marking of answer scripts will begin immediately, and results will be released without delay.”*

[The reference in this statement to an ‘expert committee’, is a reference to the 7 experts selected by the Honourable Prime Minister.]

- xiii. The CGE was also informed that a five-member expert committee had been appointed by the Secretary to the Ministry of Education by her letter dated 3rd October 2024 (“R11”). The Terms of Reference conferred on that committee was to consider whether more than three questions of Paper I had been leaked. The Report (“R12”) of that committee was available by the 5th October 2024.
- xiv. On or about 14th October 2024 (the date has not been specifically stated) – The CGE decided to adopt the recommended solution of **awarding free marks to the three compromised questions** of Paper I. This decision was notified to the public on 14th October 2024 by way of the issuance of a press release.

A copy of this press release was not tendered to Court. Upon inquiry being made by Court the learned Solicitor General submitted that this decision had also not been officially recorded by the CGE.

150) From the afore-stated sequence of events relating to the decision-making process and an examination of the associated documentation, the following can be concluded:

- The internal decision-making process which was initiated on the 17th September 2024 resulted in the CGE purportedly deciding on the same day to exclude the compromised three questions from the scoring process.
- The internal decision-making process continued till 26th September 2024 up until when the CGE was instructed by the Honourable Prime Minister to submit a report on recommended remedial action.
- By 27th September 2024, the CGE was armed with the Report of his expert committee (three Deputy Commissioners of Examinations) which contained three options available for the resolution of the problem (“R7”).
- The availability of “R7” did not result in the CGE taking a decision on the matter. Nor, did the CGE vary his initial decision to exclude the three compromised questions from the scoring process.

- The CGE did not request the Honourable Prime Minister to secure on his behalf further expert opinion. Expert opinion of seven experts were sought at the initiative of the Honourable Prime Minister.
- The individual views of the seven-member expert committee appointed by the Prime Minister were available to the CGE by the 29th of September 2024. Even on a consideration of the recommendations received from the seven experts, the CGE by himself did not arrive at a decision on the matter. He along with the Secretary to the Ministry merely noted and endorsed those recommendations and submitted them to the Honourable Prime Minister for her “kind reference and necessary action”.
- The statement issued by the Ministry of Education dated 29th September 2024 and jointly signed by the Secretary to the Ministry and the Commissioner General of Examinations (“P15A”) indicates that the Department of Examinations has decided to adopt one recommended solution and that being to award free marks for the three compromised questions. However, the learned Solicitor General has admitted, that there is no official entry which reveals that the CGE had taken such a decision.
- In this backdrop, it is intelligible why at paragraph 40 of the Affidavit of the CGE it states that *“it was decided to adopt the recommended solution...”*.

151) The afore-stated analysis reveals that following the convening of the meeting by the Honourable Prime Minister on the 26th September 2024, the CGE has abandoned the internal decision-making process he was involved in, and has abdicated that role to the Honourable Prime Minister / Minister of Education and to the Secretary to the Ministry. Though both the Honourable Prime Minister / Minister of Education and the Secretary to the Ministry may not have intended to take-away from the CGE his decision-making authority or to influence the process, that has been the effect of their involvement. Furthermore, **in the totality of the circumstances referred to above, it is evident that the impugned decision to award free marks to the three compromised questions (which to date according to the Solicitor General has not been documented by the CGE in any official file) has not been taken independently by the CGE founded upon the inherent discretionary authority vested in him by the governing law.**

152) As regards the non-recording (non-documentation) of the impugned purported decision of the Commissioner General of Examinations and possible inferences arising thereof, I must hasten to add that, a study of the post-1978 era judicial precedence of this Court and also those of the Court of Appeal, clearly reveal that, without exception, this Court has in the course of exercising judicial review, refused to judicially endorse impugned decisions of public functionaries, which have not been contemporaneously recorded in the official file. A contemporaneous recording of a decision by a public functionary is possibly the only reliable evidence there could be to prove that such a decision in fact does exist, and was taken at or about the time such decision is said to have been taken and under the circumstances that prevailed at that time. Endorsing a decision which has not been contemporaneously recorded by the decision-maker (as in this case), can be extremely dangerous, and can give rise to multi-faceted repercussions, which would not be in consonance with the Rule of Law and would also not be in the public interest. However, it is necessary to recognise that there can be certain instances where exigencies of the situation may have prevented the decision maker from promptly recording the decision. Furthermore, the existence of such a decision may be apparent where it has been incorporated into a succeeding decision. However, it is noteworthy that in this instance none of those exceptions apply and the CGE has failed to adduce any valid reason for not having recorded his purported decision.

153) In the circumstances, I conclude that the impugned purported decision to award free marks to the three compromised questions is not a decision that can be attributed to the decision-making authority recognised by the governing law, that being the CGE.

154) Therefore, for the foregoing reasons set out in paragraph Nos. 151, 152 and 153, I conclude that **the impugned decision to award free marks for the three (3) compromised questions is not in consonance with the Rule of Law, and therefore infringes Article 12(1) of the Constitution.**

Declarations and Orders of Court

155) The following declarations are made by this Court:

- i. It is declared that, by the breach of the integrity of Paper I of the Grade 5 Scholarship Examination conducted on 15th September 2024 occasioned due to the breach in confidentiality of three (3) questions contained therein, the fundamental right to equality and the protection of the Rule of law guaranteed by Article 12(1) of the Constitution of the student candidates (including those among the Petitioners) who did not benefit from receiving advance notice of the said three questions had been infringed by the State. The 13th Respondent – I.G.S. Premathilake and the 6th Respondent in SC/ FR 291/ 2024 and 9th Respondent in SC/FR 294/2024 - C.M. Chaminda Kumara Ilangasekara are culpable for such infringement.
- ii. It is declared that the impugned purported decision of the 1st Respondent - Commissioner General of Examinations to award free marks for three answers corresponding to the three compromised questions in Part I of the Grade 5 Scholarship Examination held on 15th September 2024, has been taken contrary to law, is *ultra vires*, and is thus unlawful. In the circumstances of this case, the said decision is a nullity. It contravenes Article 12(1) of the Constitution.
- iii. In view of the foregoing finding (contained in sub-paragraph ‘ii’ above) that the impugned purported decision taken by the Commissioner General of Examinations is a nullity, Court notes that the decision of the Cabinet of Ministers taken at its meeting held on 25th November 2024 endorsing such impugned purported decision of the Commissioner General of Examinations, is also a nullity.

156) The following Orders are made by this Court:

- i. The Commissioner General of Examinations is directed to forthwith act in terms of the law, and based on recommendations presented to him by the several experts and any other relevant material he may wish to consider, decide on one out of the three solutions (referred to in this judgment) as a means of resolving the breach in the confidentiality of the three questions of Part I of the Grade 5 Scholarship Examination conducted on 15th September 2024. He shall

- thereafter promptly implement such decision, initiate the commencement and completion of the assessment of answer scripts, finalise the results and issue such results of the Grade 5 Scholarship Examination held on 15th September 2024.
- ii. The Commissioner General of Examinations is directed to undertake and carryout a detailed study of the prevailing rules of procedure and practices relating to the conduct of public examinations, the manner in which the integrity of such examinations may have been breached in the past (with specific reference to the manner in which the breach in confidentiality had occurred in the instance referred to in this Judgment) and identify the manner in which the entire public examination process could be strengthened so as to ensure that the integrity of public examinations is not compromised in the future. A Report in that regard is to be prepared and submitted to this Court within three (3) months of the delivery of this Judgment.
 - iii. The Director of the Criminal Investigation Department is directed to submit to the Director General of the Commission to Investigate Allegations of Bribery or Corruption within two (2) weeks of this Judgment, a detailed Report on investigations conducted by the CID, for the purpose of enabling that Commission to consider whether the conduct of I.G.S. Premathilake and C.M. Chaminda Kumara Ilangasekara should be investigated into for having committed the offences of 'Conspiracy to commit Corruption', 'Corruption' and 'Abetment to commit Corruption' as defined in the Anti-Corruption Act.
 - iv. The Director of the Criminal Investigation Department is directed to conduct necessary further investigations including (a) a financial analysis relating to the suspects, (b) further investigations arising out of the forensic analysis of digital devices, and (c) investigation into the conduct of P.A.M. Buddhika Pathiraja. If it transpires that P.A.M. Buddhika Pathiraja has also committed an offence, necessary action shall also be taken against him in terms of the law.
 - v. The Director of the Criminal Investigation Department is directed to submit to this Court within three (3) months from the delivery of this Judgment, a Report setting out in detail, action taken and the outcome of the investigation.

- vi. The Attorney-General is directed to provide necessary advice to the Criminal Investigation Department regarding the investigation being conducted, and following the completion of investigations, expeditiously consider the institution of criminal proceedings against offenders.
- vii. The Attorney-General is directed to tender to (a) the Cabinet of Ministers, (b) Secretaries of Ministries and (c) Heads of all Government Departments and statutory bodies, an advisory containing the legal principles embodied in this Judgment and the manner in which such officials will be required by law to adhere to the said principles.
- viii. As a punitive measure,
 - a) the 13th Respondent – I.G.S. Premathilake is directed to pay the State a sum of Rs. 3,000,000.00 (Three Million Rupees), and
 - b) the 6th Respondent in SC/ FR 291/2024 and 9th Respondent in SC/FR 294/2024 - C.M. Chaminda Kumara Ilangasekara is directed to pay the State a sum of Rs. 2,000,000.00 (Two Million Rupees).

The State shall utilize such sums of money to conduct research into the manner in which processes within the Department of Examinations could be developed so as to ensure optimally the integrity of the Grade 5 Scholarship Examinations. This payment shall be made within four (4) weeks of the delivery of this Judgment.

- ix. The Petitioners shall be entitled to recover jointly from (a) the 13th Respondent – I.G.S. Premathilake and (b) 6th Respondent in SC/FR 291/2024 and 9th Respondent in SC/FR 294/2024 - C.M. Chaminda Kumara Ilangasekara the actual costs incurred by them in the filing and prosecution of these four (4) Applications. Should the Petitioners wish to recover such costs, they are required to submit their Bills of Costs to the afore-stated Respondents through the Registrar of this Court within four (4) weeks hereof.
- x. A Report with regard to action taken by the Attorney-General in accordance with this Judgment is to be submitted to this Court within three (3) months of

the delivery of this Judgment along with a copy of the legal advisory referred to herein-above.

157) Accordingly, these four (4) Applications are partly allowed.

158) This Court wishes to express its deep appreciation to learned counsel for all parties regarding the cooperation extended by them towards the expeditious hearing of these Applications, and the assistance extended to Court towards appreciating the evidence and the applicable law.

Kumudini Wickremasinghe, J.

Judge of the Supreme Court

I agree.

Arjuna Obeyesekere, J.

Judge of the Supreme Court

I agree.

Judge of the Supreme Court