

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

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

CA (Writ) Application No. 690/2010

1. Dissanayake Mudiyansele Amila Prasad,
271/3, Amila Niwasa,
Karandagolla, Melsiripura.
2. Agampodi Harsha De Soyza,
No. 10 A, Maha Udalu Mawatha,
Dadalla, Galle.
3. Pathiranage Dhananjaya Bandara,
Abeyrathne Stores, Ihalagama,
Alahenegama, Kobeygane.
4. Gamage Rangana Praneeth Subhasinghe,
6/6/1/16 Jayanthi Road,
Athurugiriya.
5. Naleen Tharuka Pelenwatta,
174/1, Horana Road,
Kiriwattuduwa, Homagama.
6. Pathiranage Viranga Rukshan,
Temple Junction, Aandawala,
Meegama.

7. Sisira Gajadeerage Dinesh Roshan
De Perera,
No. 100, Deke Ela Road,
Kaduruwela, Polonnaruwa.
8. Dewage Don Ayantha Aravinda
Dewage,
"Ravi Sewana", Galahitiyawa,
Madampe.
9. Kalu Arachchi Buddhika,
280/2 A, Dharmashoka Mawatha,
Kahanthota Road, Malabe.
10. Madawala Maddumage Anushka
Wijayasiri,
No. 386/A, Horawala Junction,
Welipenna.
11. Uda Gedara Anuranga Mahesh
Jayaweera,
"Polwatta", G.P.S. Road,
Yaya 08, Rajanganaya,
Angamuwa.
12. G. M. Janaka Pradeep Kumara
Tennakoon,
No. 62, Uyanwatta,
Menikhinna.
13. Dewagiri Hewayalage Ruwan
Sampath Weerakoon,
No. 65, Heepitiya Menikhinne,
Kandy.

14. Polinguwa Dewayalage Nalaka
Prasad Pathirana,
Udattapala Pahala,
Dodamgaslanda.

PETITIONERS

Vs.

1. Lieutenant General A.W.J.C De Silva,
Commander of the Army,
Army Headquarters, Colombo 01.
2. Brigadier J.R. Kulatunga,
The Commandant,
Army Training School, Diyatalawa.
3. Lieutenant Colonel, M.D.V.V.
Gunatilaka,
The Commanding Officer,
Army Training School, Diyatalawa.
4. Lieutenant Colonel J.P. Salwathura
Arachchi,
Commanding Officer,
21, SLSR, Army Camp,
Helambewewa, Welioya.
5. Major Ratnayake,
Army Training School,
Diyatalawa.
6. Major Hewatotawatta,
Army Training School,
Diyatalawa.

7. Captain Asangka,
Army Training School,
Diyatalawa.
8. Major Weligepola,
Army Training School,
Diyatalawa.
9. Hon. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

Before: Arjuna Obeyesekere, J

Counsel: J.M.Wijebandara with Shalani Chandrasena for the Petitioners

Milinda Gunatillake, Senior Deputy Solicitor General for the
Respondents

Argued on: 11th June 2018

Written Submissions of the

Petitioner tendered on: 03rd September 2018

Written Submissions of the

Respondents tendered on: 05th September 2018

Decided on: 14th September 2018

Arjuna Obeyesekere, J

The Petitioners have filed this application seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the decision of the Respondents to discharge the Petitioners from the Sri Lanka Army on the basis that their 'services are no longer required';
- b) A Writ of Mandamus compelling the Respondents to reinstate the Petitioners as Officer Cadets and allow them to complete the remaining period of their training as Officer Cadets;
- c) A declaration that the Petitioners are not in breach of the Surety Bonds signed by their respective parents.

When this matter was taken up for argument on 11th June 2018, the learned Counsel for the Petitioners informed Court that he would not be proceeding with the Writ of Mandamus and would limit his relief to the aforementioned Writ of Certiorari and the declaration.

The facts of this case very briefly are as follows.

The Petitioners, having successfully completed their advanced level examinations, had been enlisted to the Sri Lanka Army as Officer Cadets in December 2007. The enlistment procedure required the parent of the Cadet and the Cadet to enter into a Surety Bond with the Republic of Sri Lanka, and for the Cadet to enter into an agreement with the Republic of Sri Lanka.

The Petitioners formed part of Intake 67 of the Sri Lanka Military Academy at Diyatalawa and had commenced their two year period of training on 3rd January 2008. During the period that the Petitioners were undergoing their training in Diyatalawa, there were two other junior intakes that were also undergoing training, namely Intake 47, which was an intake of Office Cadets attached to the Volunteer Force of the Sri Lanka Army and Intake 69.

The Petitioners claim that during the training period, the 8th Respondent, who was in charge of Intake 47 had developed an animosity towards the Officer Cadets of Intake 67, and as a result of this alleged animosity, the 8th Respondent had subjected some of the Officer Cadets of Intake 67 to cruel and inhuman treatment. The Petitioners claim further that in the morning of 29th September 2009, the 8th Respondent had assaulted some of the Officer Cadets of Intake 67. The Petitioners further claim that on the night of September 29th 2009, the 8th Respondent had arrived with Officer Cadets of Intake 47 and assaulted the Officer Cadets of Intake 67, including the Petitioners.

A Court of Inquiry, comprising of the 4th – 7th Respondents had been appointed on 12th January 2010 to inquire into the incidents that took place on 29th September 2009. The Respondents have submitted a copy of the Order by which the Court of Inquiry had been appointed marked 'R7'. This Court has examined 'R7' and notes that the scope of the Court of Inquiry extended to inquiring into two incidents involving Officer Cadets of Intake 67 – namely the aforementioned incident on 29th September 2009 with Intake 47 and a further incident between the Officer Cadets of Intakes 67 and 69 that took place on 24th October 2009. This Court observes that the Petitioners have not adverted

to the latter incident in their petition. In terms of 'R7', the Court of Inquiry was required to give its specific attention to the following matters:

මූලික පරීක්ෂණ උසාවිය විසින් පහත දැක්වා ඇති කරුණු පිළිබඳව විශේෂ අවධානය යොමුකර ක්‍රියාකල යුතුවේ:

අ. මෙම ගැටුමේ ස්වභාවය කුමක්ද යන්න.

ආ. මෙම ගැටුම ඇතිවීමට හේතුව කවරේද යන්න.

ඇ. මෙම ගැටුමට මූලික වූ අයවචන කවුරුන්ද සහ ඔවුන්ට එරෙහිව ගත යුතු ඉදිරි ක්‍රියාමාර්ගයන් කවරේද යන්න.

ඈ. මිට ප්‍රථම මෙවැනි ගැටුම්කාරී තත්ත්වයන් පැවතියේද එසේ නම් ඒ සඳහා ගෙන ඇති ක්‍රියාමාර්ගයන් කවරේද යන්න.

ඉ. මෙවැනි ගැටුම් මින් ඉදිරියේදී ඇති නොවීමට ගත යුතු ක්‍රියාමාර්ග කවරේද යන්න.

ඊ. මූලික පරීක්ෂණ උසාවියට හැඟිය හැකි වෙනත් කරුණු.

Provisions with regard to Courts of Inquiry and the manner in which they should be conducted have been set out in the 'Army Courts of Inquiry Regulations, 1952'.¹ Regulation 2 thereof reads as follows:

"A Court of Inquiry means an assembly of officers, or, of one or more officers together with one or more warrant or non-commissioned officers, directed to collect and record evidence and, if so required, to report or make a declaration with regard to any matter or thing which may be referred to them for inquiry under these regulations."

The scope of a Court of Inquiry has been set out in Regulation 16 of the said Regulations marked 'R7', and reads as follows:

¹ The said Regulations have been annexed to the Statement of Objections of the Respondents, marked 'R6'

"Every Court of Inquiry shall record the evidence given before it, and at the end of the proceedings it shall record its findings in respect of the matter or matters into which it was assembled to inquire as required by the convening authority."

Thus, the primary task of a Court of Inquiry is to record the evidence in relation to the said incident and submit a report at the end of its hearing. The said Regulations contain many provisions, which will be adverted to later², with regard to the manner in which the proceedings of the Court of Inquiry should be conducted. In Hulangamuwa vs Balthazar³, this Court, having examined the provisions of the Court of Inquiry Regulations has stated as follows:

"A consideration of these regulations, in particular the procedure prescribed therein and the duties and functions of the Court of Inquiry, reveals that it possesses all the attributes of a judicial tribunal. It bears a judicial character. In my view, a Court of Inquiry is a tribunal that is sanctioned and recognised by law and is clothed with all the attributes and incidents of a court of justice. It is one which exercises jurisdiction over persons subject to the military law."

The proceedings of the Court of Inquiry had been held from 14th January 2010 to 24th January 2010. While the evidence given by the Petitioners to the Court of Inquiry have been submitted by the Respondents marked 'R8a' – 'R8n', the Respondents have also submitted to this Court, together with a motion dated

² Regulations 9 and 15.

³ 1984 (2) SLR 29 at page 37.

31st January 2014⁴, a complete record of the proceedings before the Court of Inquiry.

Consequent to the conclusion of its proceedings, the Court of Inquiry had submitted its report to the appointing authority. This Court has examined the observations and the conclusion of the Court of Inquiry,⁵ and notes that the conclusions reached by the Court of Inquiry with regard to the Petitioners are based on its analysis of the evidence against each of the Petitioners. The appointing authority in turn had submitted the said record of proceedings, the report of the Court of Inquiry and his recommendations to the 1st Respondent, Commander of the Sri Lanka Army. The 1st Respondent, having carefully examined the aforementioned documents, had taken the following decisions with regard to the Petitioners, as reflected in the document submitted to this Court by the Respondents, marked 'R2':

- a) The 3rd, 8th, 9th, 11th, 12th and 13th Petitioners have been involved in the assault of Officer Cadets of Intake 47, with regard to the incident that took place on 29th September 2009;
- b) The 1st, 2nd, 5th, 6th, 7th, 10th and 14th Petitioners have been involved in the assault of Officer Cadets of Intake 69, with regard to the incident that took place on 24th October 2009;

⁴ A copy of this motion and the record of the proceedings have been served on the Petitioners.

⁵ The conclusion of the Court of Inquiry has been submitted by the Respondents marked R10. The observations of the Court of Inquiry form part of the record of the proceedings of the Court of Inquiry.

- c) The 4th Petitioner, who had been entrusted with administrative duties relating to Officer Cadets had attacked an Officer of the Sri Lanka Army with stones, had failed to prevent the aforementioned incidents and had failed to comply with orders of the superior officers and therefore, is in dereliction of his duties, which necessitates disciplinary action against the 4th Petitioner;
- d) The Petitioners should be dismissed from the Sri Lanka Army on disciplinary grounds.

The Petitioners had thereafter been informed by letters dated 3rd August 2010 produced with the petition marked 'P21' – 'P34' that the 1st Respondent had approved their dismissal from the Sri Lanka Army on the basis that their 'services are no longer required'.

Being dissatisfied with the said decision of the 1st Respondent, the Petitioners have invoked the Writ jurisdiction of this Court, seeking a Writ of Certiorari to quash the said decision.

In considering the application for a Writ of Certiorari, it would be appropriate for this Court to bear in mind the following statement of Lord Diplock in the case of Council of Civil Service Unions vs Minister for the Civil Service⁶:

"Judicial review has, I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon

⁶1985 AC 374

which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety."

"By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is *par excellence* a justiciable question to be decided in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223). It applies to a decision so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."⁷

⁷ H.W.R. Wade & C.F. Forsyth, *Administrative Law* (11th Edition, Page 827 - Oxford University Press 2014).

During the course of the argument, the learned Counsel for the Petitioners submitted to this Court that he is challenging the said decision of the 1st Respondent marked 'R2' on the following three grounds:

- 1) The evidence led at the Court of Inquiry does not implicate the Petitioners.
- 2) The Court of Inquiry had failed to follow the mandatory procedure laid down in Rule 15 of the Court of Inquiry Regulations;
- 3) The Court of Inquiry had not served the Petitioners with a charge sheet.

The grounds urged before this Court by the learned Counsel for the Petitioners, falls within the grounds of irrationality and procedural impropriety as described by Lord Diplock.

This Court must note that in terms of Item XIII(a) of Table A of the Soldiers Service Regulations No. 1 of 1994⁸, which applies to Officer Cadets during their period of training and prior to being Commissioned, the 1st Respondent has the power to discharge soldiers on the basis that their services are no longer required. In these proceedings, the Petitioners are not challenging this power of the 1st Respondent to discharge them under the said provision but as set out above, is limiting their challenge to the said decision on the basis of irregularities in the Court of Inquiry proceedings and its recommendations.

⁸ The Soldier Service Regulations No. 1 of 1994 has been produced with the petition marked 'P15'. The said Regulations have been made by the President under Section 155 of the Army Act read with Article 44(2) of the Constitution.

Hence, the necessity for this Court to examine the *vires* of the decision of the 1st Respondent does not arise.

The learned Senior Deputy Solicitor General submitted that the relationship between the Petitioners and the State during the period of training of the Petitioners is governed by the provisions of the agreements that the Petitioners have entered into with the Republic of Sri Lanka at the time of their enlistment.⁹ Paragraph 9(a)(iii) of the said agreements reads as follows:

‘The Republic of Sri Lanka is hereby vested with the absolute right to rescind this agreement at any time on account of any insubordination or misconduct on the part of the Cadet during his period of training.’

A rescission of the agreement would result in the termination of the training period of the Petitioners and their dismissal from the Sri Lanka Army. He submitted that the decision of the 1st Respondent to dismiss the Petitioners from the Sri Lanka Army falls within the said paragraph and is therefore outside the purview of the Writ jurisdiction of this Court. While this submission of the learned Senior Deputy Solicitor General has much merit, the necessity for this Court to consider the said submission does not arise as the Petitioners have not challenged the right of the 1st Respondent to dismiss them from the Sri Lanka Army.

This Court would now consider each of the three grounds urged by the learned Counsel for the Petitioners before this Court.

⁹ Copies of the said Agreements have been submitted by the Respondents, marked ‘R3a’ – ‘R3n’.

The Petitioners first complaint to this Court is that the evidence led at the Court of Inquiry does not implicate the Petitioners with regard to the incident that took place on 29th September 2009 with the Officer Cadets of Intake 47. According to the evidence led at the Court of Inquiry, there had been several previous altercations between the Officer Cadets of Intakes 67 and 47, including on the 28th September 2009.¹⁰

While this Court does not wish to go into the specific reason for these altercations, it appears that the Cadets attached to Intake 47, which comprised of Volunteer Force Cadets and who had joined subsequent to Intake 67, being assigned administrative tasks over the senior Cadets of Intake 67 may have been a reason.¹¹ The evidence of the several witnesses is to the effect that on the night of 29th September 2009, the Officer Cadets of Intake 67 had started a brawl with the Officer Cadets of Intake 47, with several of the Petitioners assaulting some of the Cadets of Intake 47. The record of the proceedings before the Court of Inquiry does not support the Petitioners position that the 8th Respondent together with the Cadets of Intake 47 assaulted the Petitioners and other members of their intake.

In this regard, this Court observes that 2nd Lieutenant K.A.C.P.Kamalawarne has identified the 3rd, 6th, 8th, 9th and 12th Petitioners as being among the Cadets of Intake 67 involved in the altercation. 2nd Lieutenant D.G.U. Nanayakkara who was an Officer Cadet of Intake 47 has identified the 3rd, 12th and 13th

¹⁰ This is borne out by the evidence given by 2nd Lieutenant K.A.S.P.Kamalawarne on 21st January 2010 to the Court of Inquiry. He says that the 3rd, 6th, 8th, 12th and 13th Petitioners were involved in assaulting the Cadets of Intake 47 on 28th September 2009. His evidence of previous incidents of assault on the part of Cadet Officers of Intake 67 is corroborated by the evidence of 2nd Lieutenant W.A.N.D.Wijewardena.

¹¹ This is borne out by the evidence given by Major G.M.S.Karunaratne on 21st January 2010 to the Court of Inquiry.

Petitioners as being some of the persons who were involved in the assault of the cadets of Intake 47. 2nd Lieutenant S.M.L.Prasad who was also an Officer Cadet of Intake 47 has identified the 12th Petitioner as being the person who assaulted him. He claims further that the 3rd and 13th Petitioners were also present. 2nd Lieutenant W.A.N.D.Wijewardena, also an Officer Cadet of Intake 47 has identified the 3rd Petitioner as being the person who assaulted him. He claims further that the 12th and 13th Petitioners were also present. While 2nd Lieutenant H.K.S.Pradeep who was also an Officer Cadet of Intake 47 has identified the 3rd and 6th Petitioners as being the persons who assaulted him, in answer to a question by the members of the Court of Inquiry, he has stated that the 3rd, 6th, 9th and 13th Petitioners were involved in assaulting the other cadets. Evidence with regard to the involvement of the 11th Petitioner has been given by 2nd Lieutenant D.S.L.N.Wijesekara and 2nd Lieutenant H.K.S.Pradeep. In his evidence to the Court of Inquiry, the 3rd Respondent, Lieutenant Colonel M.D.V.V.Gunatilake, who was the Commanding Officer of the Officer Cadets at Diyathalawa has explained in detail the lack of discipline that prevailed among the Officer Cadets of Intake 67. He has specifically identified the 4th Petitioner as being the person who stoned Captain Ranawaka on the night of 29th September 2009.

This Court has examined the record of the proceedings before the Court of Inquiry and observes that each of the above-mentioned Petitioners were afforded the opportunity of cross examining a witness who spoke of their involvement soon after the evidence of that witness was recorded. This fact confirms that the Petitioners implicated with the incident of 29th September 2009 were present when the evidence of the witnesses was recorded.

The second incident had occurred on 24th October 2009, with the allegation again being that the Officer Cadets of Intake 67 had assaulted the Officer Cadets of Intake 69. The assault had been so severe that some of the victims had to seek in-house medical treatment at the Army Hospital. This Court has examined the record of the proceedings before the Court of Inquiry and find that the following witnesses speak of the involvement of the following Petitioners in the said assault:

- ✓ Cadet Officer G.B.Wellangiriya - 1st, 2nd, 5th, 6th, 7th, 10th and 14th Petitioners
- ✓ Cadet Officer A.A.R.M.Fernando - 2nd, 7th, 10th and 14th Petitioners
- ✓ Cadet Officer B.S.Seneviratne - 2nd, 5th, 6th, 7th, 10th and 14th Petitioners
- ✓ Cadet Officer G.L.K.M.Jayakody - 1st, 2nd, 6th, 10th and 14th Petitioners

This Court also observes that each of the above mentioned Petitioners were afforded the opportunity of cross examining a witness who spoke of their involvement, soon after the evidence of that witness was recorded. This fact confirms that the 1st, 2nd, 5th, 6th, 7th, 10th and 14th Petitioners were present when the evidence of the witnesses was recorded.

In the above circumstances, this Court is of the view that there was sufficient evidence before the Court of Inquiry with regard to the involvement of the Petitioners in the incidents that took place on 29th September 2009 and 24th October 2009. The argument of the Petitioners that there is no evidence against them is therefore incorrect. It is this evidence that was relied upon by the members of the Court of Inquiry when it recommended that the Petitioners should be removed from the Sri Lanka Army in order to uphold the

good name and reputation of the Sri Lanka Army. The decision of the 1st Respondent is also based on this evidence. In these circumstances, it cannot be claimed that the recommendations of the Court of Inquiry and the subsequent decision of the 1st Respondent is irrational. Therefore, the first ground urged on behalf of the Petitioners must fail.

The second ground urged on behalf of the Petitioners is that the Court of Inquiry had failed to follow the mandatory procedure laid down in Rule 15 (1) of the Court of Inquiry Regulations, which reads as follows:

“Whenever an inquiry affects the character or the military reputation of an officer or soldier, the officer or soldier concerned shall be afforded the opportunity of being present throughout the inquiry. He shall also be allowed to make a statement, to adduce evidence in his own behalf and to cross-examine any witnesses whose evidence is likely to affect his character or military reputation.”

The Respondents have submitted that each of the above requirements have been complied with. This Court has examined the record of the proceedings of the Court of Inquiry and observe that each of the Petitioners have in fact made a statement before the Court of Inquiry.¹² This Court must note that the Court of Inquiry has afforded the Petitioners an opportunity to cross examine a witness each time they were implicated by that witness. It is also clear that the Petitioners were present right throughout the inquiry, when one considers the fact that the Court of Inquiry afforded a petitioner the right to cross examine a

¹²The Statements made by each of the Petitioners have been produced by the Respondents, marked 'R8a' - 'R8m'.

witness who spoke of that Petitioner's involvement soon after the evidence of that witness was concluded.

Hence, this Court is of the view that the requirements of Regulation 15 have been complied with by the Court of Inquiry. The argument of the Petitioners that the Court of Inquiry was conducted in violation of the Regulations is not supported by the documentary evidence presented to this Court. In these circumstances, this Court is of the view that there has not been any procedural impropriety with regard to the manner in which the proceedings of the Court of Inquiry were conducted. Accordingly, this Court rejects the second ground urged on behalf of the Petitioners.

The third and final ground urged on behalf of the Petitioners was that a charge sheet had not been served on them. This demonstrates a clear lack of understanding on the part of the Petitioners with regard to the scope and nature of a Court of Inquiry. As set out in Regulation 2 of the Court of Inquiry Regulations, the function of a Court of Inquiry is to "to collect and record evidence and, if so required, to report or make a declaration with regard to any matter or thing which may be referred to them for inquiry under these regulations".

The following observation of this Court in Harischandra vs. Commander of the Army¹³ explains the reason as to why the Court of Inquiry does not involve the issuing of a charge sheet:

¹³CA (Writ) Application No. 895/2007. CA Minutes of 28th July 2009

"A Court of Inquiry is different from a disciplinary inquiry. In a disciplinary inquiry, a charge sheet will be served and the person accused will have an opportunity to answer the charges and defend himself. In a Court of Inquiry, there is no accused or charge sheet (.) All those who appear before the Court of Inquiry are witnesses as it is a fact-finding inquiry. Only in instances where the inquiry affects the character or military reputation of an officer or a soldier the officer or soldier was afforded an opportunity of being present throughout the inquiry and allowed to cross-examine any witness, make statements and adduce evidence on his own behalf."

The necessity for the Court of Inquiry to issue a charge sheet on the Petitioners therefore does not arise. In these circumstances, this Court finds no merit in the final ground urged on behalf of the Petitioners.

The allegation that the incident of 29th September 2009 was instigated by the 8th Respondent due to the animosity that he bore towards the Officer Cadets of Intake 67 is a very serious allegation which ought to have been supported with cogent material. This Court notes that the Petitioners have not explained as to why the 8th Respondent bore a grudge towards them nor has this issue been raised when some of the Petitioners cross examined the 8th Respondent during the proceedings of the Court of Inquiry. Thus, the only reasonable inference that this Court can draw is that the alleged animosity on the part of the 8th Respondent was devised by the Petitioners in order to support their version that they were the victims when in fact, the evidence before this Court is to the contrary.

The Petitioners were being trained as Officer Cadets in order to be commissioned as Officers of the Sri Lanka Army. Thus, it is paramount that the highest standards of discipline are maintained by the Petitioners at all times. The evidence presented to this Court by the Respondents is to the contrary. In terms of Regulation 2 of the Army Discipline Regulations, 1950, the Commander of the Sri Lanka Army is vested with the general responsibility for discipline in the Sri Lanka Army and this Court shall not interfere with that duty, unless the circumstances warrant such interference, which is not the case in this application.

In this regard, it would be well to remember the following passage of Justice Sripavan (as he then was) in Wikramaratne vs Commander of the Army and others¹⁴, where he stated as follows:

“in service matters, the 1st Respondent should be left with a free hand to make decisions with regard to the internal administration of the Army in the interest of efficiency, discipline, exigencies of service etc. The Court cannot interfere with the appointment or promotion unless the first respondent has acted unlawfully, arbitrarily, or guided by ulterior considerations which are discriminatory or unfair.”

In the totality of the facts and circumstances of this case, this Court is of the view that the decision of the 1st Respondent set out in 'R2' and the subsequent letters marked 'P21' – 'P34' is in terms of the law and is not liable to be quashed by a Writ of Certiorari.

¹⁴ CA (Writ) Application No. 800/2006 CA Minutes of 07th January 2008. Although the said observations were made in the context of a promotion, this Court is of the view that it would be equally applicable to disciplinary action taken by the Commander of the Sri Lanka Army.

As set out at the beginning of this judgment, each Petitioner and his parents have entered into a Surety Bond¹⁵ in terms of which the Cadet and the parent was required to reimburse all sums of money expended by the Government on the Cadet in the event the Cadet failed to successfully complete the training or failed to serve the Sri Lanka Army for a period of 10 years, upon completion of the training. The Petitioners have sought a declaration that the Petitioners are not in breach of the obligations imposed on them by the Surety Bonds signed by them and their respective parents, which requires this Court to make a determination on a contractual matter. This Court has consistently held that matters arising out of contract are outside the Writ jurisdiction of this Court, unless there is a statutory flavour to the said decision¹⁶, which is not the case in this application. In these circumstances, this Court is of the view that it does not have the jurisdiction to consider the said relief sought by the Petitioners.

The application of the Petitioners for a Writ of Certiorari is therefore refused and this application is accordingly dismissed, without costs.

Judge of the Court of Appeal

¹⁵ Copies of the Surety Bonds have been submitted with the petition, marked 'P3a' – 'P3n'.

¹⁶ See CA (Writ) Application No. 425/2017 CA Minutes of 24th May 2018