

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

In the matter of an Application for mandates in the nature of Writs of Certiorari and Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Application No. CA (WRIT) 173/2021

Janaka Bandara
412, 3rd Lane
Robert Gunewardena Mawatha,
Battaramulla.

Petitioner

Vs.

1. Hon. Upali Abeyrathne,
Retired Judge of the Supreme Court
Chairman
No. 42/10, Beddagana North,
Pita Kotte.
2. Hon. Daya Chandrasiri Jayathilake,
Retired Judge of the Court of Appeal
Member
No. 24, Diyawanna Gardens
Pelawatta Battaramulla.
3. Mr. Chandra Fernando,
Retired Inspector General of Police
Member
No.1, Shrubbery Gardens
Colombo 4.

Being Chairman and Members respectively of the Commission of Inquiry to inquire and obtain information to alleged incidents of political victimization of Public Corporations, Members of the Armed Forces and the Police Services.

Room No.210, Block No.2, 211d Floor,
Bandaranayake International Conference Hall
Buddhaloka Mawatha Colombo 7.

4. Mrs. Pearl K. Weerasinghe,
Former Secretary to the Commission of Inquiry,
Room No.210,
Block No.2 , 2nd Floor,
Bandaranayake International Conference Hall
Buddhaloka Mawatha
Colombo 7.

5. Hon. Attorney General
Attorney General's Department
Colombo 12.

- 5(ii) Minister of Finance
Minster of Buddha Sauna,
Religious and Cultural Affairs
Minister of Urban Development and Housing
The Secretariat,
Lotus Road, Colombo 01.

- 5(iii) Minister of Labour,
Labour Secretariat,
Kirula Road, Colombo S.

- 5(iv) Minister of Education
"Isurupaya", Battaramulla.

- 5(v) Minister of Health
"Suwasiripaye"
No. 385,
Rev. Baddegama Wimalawansa Mawatha,
Colombo 10.

- 5(vi) Minister of Foreign Relations
Republic Building,
Colombo 1.

- 5(vii) Minister of Fisheries
New Secretariat,
Maligawatta, Colombo 10.

- 5(viii) Minister of Transport
7th Floor, Sethsiripaya,
Stage II, Battaramulla.

- 5(ix) Minister of Trade
The Secretariat,
Lotus Road, Colombo 01.
- 5(x) Minister of Wildlife and Forest Conservation
No. 1090,
Sri Jayawardena Pura Mawatha,
Rajagiriya.
- 5(xi) Minister of Public Services,
Provincial Councils and Local Government
"Nila Medura",
Elvitigala Mawatha,
Narahenpita, Colombo 5.
- 5(xii) Minister of Mass Media
163, "Asi Disi Medura"
Kirulapone Mawatha,
Polhengoda, Colombo 5.
- 5(xiii) Minister of Irrigation
No. 500, T.B. Jayah Mawatha,
Colombo 10
- 5(xiv) Minister of Highways
Sethsiripaya Circular Road,
Battaramulla.
- 5(xv) Minister of Industries
Level 07, West Tower,
World Trade Center,
Colombo 01.
- 5(xvi) Minister of Environment,
Sobadam Piyasa, No. 416/C/1
Robert Gunawardana Mawatha, Battaramulla.
- 5(xvii) Minister of Land,
"Mihikatha Madura"
Land Secretariat, No. 1200/6,
Rajamalwatta Road, Battaramulla.
- 5(xviii) Minister of Agriculture,
No.288,
Sri Jayawardanapura Mawatha,
Sri Jayawardanapura Kotte.

- 5(xix) Minister of Water Supply,
Lakdiya Madura, No. 35,
New Parliament Road,
Sri Jayawardanapura Kotte.
- 5(xx) Minister of Energy
No. 80,
Sir. Earnest De Silva Mawatha,
Colombo 7.
- 5(xxi) Minister of Plantation
11th Floor, Sethsiripaya,
02nd Stage, Battaramulla.
- 5(xxii) Minister of Tourism
World Trade Centre,
West Tower, Level 30,
Colombo 01.
- 5(xxiii) Minister of Ports and Shipping
No.19, 1 Chaithya Road,
Colombo.
- 5(xxiv) Minister of Youth and Sports Affairs
No.09,
Philip Gunawardena Mawatha,
Colombo 07.
- 5(xxv) Minister of Justice,
Superior Court Complex,
Colombo 12.
- 5(xxvi) Minister of Public Security
14th Floor, "Suhurupaya",
Battaramulla.
6. Secretary to the Cabinet of Ministers,
Office of the Cabinet of Ministers,
Republic Building,
Sir Baron Jayathilake Mawatha,
Colombo 01.

7. Director General,
The Commission to Investigate Allegations of
Bribery or Corruption,
No.36, Malalasekera Mawatha,
Colombo 07.
8. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp Street,
Colombo.
9. Inspector General of Police,
Police Headquarters,
Colombo 1.

Respondents

Before **Hon. Justice Nishshanka Bandula Karunaratna**

Hon. Justice Devika Abeyratne

Hon. Justice D.N. Samarakoon

Counsel Mr. Romesh de Silva PC with Sugath Caldera, Harith de Mel and Sahiru Jayasinghe instructed by Ms. Nisansala Wijesinghe for the Petitioner.

Mr Milinda Gunathilake, ASG with Dilan Ratnayake, DSG, Uresha de Silva, SSC and Manohara Jayasinghe, SSC for the 5th to 8th Respondents.

Order Delivered on 03/08/2021

Nishshanka Bandula Karunaratna J.

Heard the learned counsel.

The learned President's Counsel for the petitioner stated that there were two complainants to the Presidential Commission of Inquiry into Political Victimization, who had allegedly levelled allegations against the petitioner;

1. Mr. Nissanka Senadipathy, Chairman of Avante Garde Maritim, bearing number PCI/PV/01/Com.50/2020 (50/2020)
2. Mr. Victor Samaraweera bearing complaint number 431/20.

The petitioner states that the aforesaid complainants had been indicted by the Attorney General before the High Court Trial at Bar in case No. HC/TAB/715/2019. The petitioner further stated that he was involved in the prosecution of the said complainants before the High Court Trial at Bar in the discharge of his official duties as a senior state counsel.

The petitioner states that at the Presidential Commission of Inquiry, the 1st to 3rd respondents had made several adverse decisions and recommendations against the petitioner in their final report handed over to His Excellency the President.

The learned President's Counsel for the petitioner made submissions to the effect that 'the Commission has no jurisdiction to inquire into the conduct of an officer of the Attorney General's Office, as the petitioner has carried out the decisions of the superior officers, which were countersigned by the Hon. Attorney General (then) and the annexed letter marked P148 and P 149 were written by the petitioner in the performance of his duty as an officer of the AG's Department.'

The learned Additional Solicitor General who appeared for the 5th to 8th respondents said that his position with regard to this matter had already been recorded before Court on 30th March 2021, as follows:

"This position will be maintained by the said respondents. In particular, the attention of the Court is drawn to the undertakings given by Mr. Sanjeewa Jayewardene, P.C. on 30th March 2021 on behalf of the 6th respondent that prior to causing any of the recommendations or decisions contained in the report of the 1st to 3rd respondents that His Excellency wishes in the first instance bring an objective mind to bear on the contents of the said report and the recommendations and decisions therein, and to that end seek due legal advice as well as to await all recommendations as well as the final report of the Special Presidential Commission appointed by His Excellency in terms of Government Gazette (Extraordinary) bearing number 2212/53 dated 29/01/2021, 2213/47 dated 05/02/2021, 2215/59 dated 19/02/2021 and 2221/54 dated 01/04/2021, that has now been constituted by His Excellency for the purpose of furnishing final recommendations to His Excellency."

The learned ASG indicated that the attention of this Court is also drawn to what is recorded on behalf of the 8th respondent (attorney general) that, the petitioner has acted within the course of and within the scope of his employment, in relation to the matters set out in the petition.

The learned ASG further said that, "the 8th respondent also wishes to inform Court that:

- A. "No indictment, investigation, charge or inquiry has been initiated against the petitioner and no such measures will be taken until the Special Presidential Commission makes its recommendations."
- B. "Further, the promotional prospects of the petitioner will not be hindered on account of any adverse finding made by the 1st to 3rd respondents. The Public Service Commission will be notified of this."
- C. "Out of an abundance of caution we wish to inform Court that the Special Presidential Commission will be assisted by the officers of the Attorney General's Department. The position of the Hon. Attorney General before the commission comprising of the 1st to 3rd respondents will be consistent with the communication by the Attorney General to the commission."

The learned ASG added that, therefore the said commission comprising of the 1st to 3rd respondents did not have the jurisdiction to inquire into the conduct of the petitioner, who at all times acted with the boundaries of his official duties.

The learned President's Counsel for the petitioner said that it is important to note the decision of the Cabinet dated 18th January 2021 marked as 'P14'. It is as follows:

“Implementing the decisions and recommendations of the Presidential Commission of Inquiry to Investigate Incidents of Political Revenge. His Excellency the President appointed a presidential commission of inquiry to investigate incidents of political revenge which are said to have happened to public officers, employers of government cooperation, and members of the armed forces and police service between the 08th January 2015 to the 16th November, 2019. The report of the aforesaid commission has been handed over to His Excellency the President. Accordingly, the Cabinet of Ministers approved the proposal submitted by His Excellency the President to submit the report to the Parliament and to take necessary steps to implement the decisions and the recommendations of the aforesaid report.”

We have also considered the submission of the learned President's Counsel that the Bribery Commission, Public Service Commission and the Sri Lanka Police are not in any way precluded from acting on the impugned report.

Accordingly, the learned President's Counsel moves that an interim order be issued upon prayer (f), (g) and (h) of the petition dated 23/03/2021, pending the full and final determination of this application.

Prayer (f): For an interim order, pending the hearing and final determination of this application, preventing the respondents or any one or more of them from taking any further steps whatsoever in consequence of the findings, decisions and recommendation of the 1st to 3rd respondents in the report marked 'P4' and/or the decision of the Cabinet dated 18th January 2021 marked 'P14' in respect of the petitioner with reference to the complaints bearing No. 50/2020 and 431/20;

Prayer (g): For an interim order against the respondents or any one or more of them staying the operation of the findings, decisions and recommendations in respect of the petitioner contained in the report marked 'P4' with reference to the complaints bearing No. 50/2020 and 431/2020 pending the full and final determination of this application.

Prayer (h): An interim order staying the operation of the decision of the Cabinet dated 18th January 2021 marked 'P14' to the petition in respect of the petitioner with reference to the complaints bearing No. 50/2020 and 431/2020 pending the full and final determination of this application.

Taking into consideration the circumstances and the submissions made by both parties, the Court is inclined to issue notice on the respondents in this matter. Accordingly, this Court issues interim order against the respondents upon prayer (f), (g) and (h) of the petition dated 23/03/2021, pending the full and final determination of this application.

This interim order should be operative only until the next date of this case.

This interim order will not in any way or manner impede or prevent the actions of the aforementioned special presidential commission of inquiry constituted by Extraordinary Gazette 2212/53 dated 29/01/2021 as amended by subsequent gazettes ending with 2221/54 dated 01/04/2021, from carrying out its functions.

Accordingly, the registered attorney of the petitioner is directed to take steps to get the notices served through the registrar via registered post and courier service to all the respondents at the expense of the petitioner.

Notice Returnable on 29/09/2021.

Judge of the Court of Appeal

Devika Abeyratne J.

I agree.

Judge of the Court of Appeal

D.N. Samarakoon J.

I agree

Judge of the Court of Appeal