

**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, Mandamus and
Prohibition in terms of Article 140 of the
Constitution of the Democratic Socialist Republic
of Sri Lanka.*

Public Utilities Commission of Sri Lanka
6th Floor, BOC Merchant Tower,
St. Michael's Road, Colombo 03.

CA/WRIT/56/2023

Petitioner

Vs.

1. Kanchana Wijesekera
Minister of Power and Energy, Ministry
of Power and Energy, 437, Galle Road,
Colombo 03.
2. Secretary
Ministry of Power and Energy, 437,
Galle Road, Colombo 03.
3. Ceylon Electricity Board,
No. 50, Sir Chittampalam A. Gardiner
Mawatha, Colombo 02.
4. Chairman
Ceylon Electricity Board,
No. 50, Sir Chittampalam A. Gardiner
Mawatha, Colombo 02.

5. H. J. M. C. A. Jayasundera
Commissioner-General Examinations,
Department of Examinations,
Palawatte, Battaramulla.
6. Ceylon Petroleum Corporation
No. 609, Dr. Danister de Silva
Mawatha,
Colombo 09.
7. Chairman
Ceylon Petroleum Corporation,
No. 609, Dr. Danister de Silva
Mawatha,
Colombo 09.
8. Mahaweli Authority of Sri Lanka
No. 500, T.B. Jaya Mawatha,
Colombo 10.
9. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

AND NOW BETWEEN

J. W. M. Janaka P. K. Ratnayake
41/27, 3rd Lane, D. M. Colombage
Mawatha,
Colombo 00500.

Intervenant Petitioner

Vs.

1. Public Utilities Commission of Sri Lanka
6th Floor, BOC Merchant Tower,
St. Michael's Road, Colombo 00300.

Petitioner-Respondent

2. Kanchana Wijesekera
Minister of Power and Energy, Ministry
of Power and Energy, 437, Galle Road,
Colombo 00300.
3. Secretary
Ministry of Power and Energy,
437, Galle Road, Colombo 00300.
4. Ceylon Electricity Board
No. 50, Sir Chittampalam A. Gardiner
Mawatha, Colombo 00200.
5. Chairman
Ceylon Electricity Board,
No. 50, Sir Chittampalam A. Gardiner
Mawatha, Colombo 00200.
6. H. J. M. C. A. Jayasundera
Commissioner-General Examinations,
Department of Examinations,
Palawatte, Battaramulla.
7. Ceylon Petroleum Corporation
No. 609, Dr. Danister de Silva
Mawatha,
Colombo 00900.

8. Chairman
Ceylon Petroleum Corporation,
No. 609, Dr. Danister de Silva
Mawatha,
Colombo 00900.
9. Mahaweli Authority of Sri Lanka
No. 500, T.B. Jaya Mawatha,
Colombo 01000.
10. Hon. Attorney General
Attorney General's Department,
Colombo 01200.

Respondents-Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Suren Fernando with Khyati Wickramanayake for the Interventient-Petitioner.

Kanishka De Silva Balapatabendi, DSG with M. Fernando SC for the 2nd, 3rd, 9th and 10th Respondents-Respondents.

Dr. Romesh De Silva PC with Ruwantha Cooray, Niran Anketell, Naamiq Nafath for the 5th and 6th Respondents-Respondents.

Sanjeeva Jayawardena PC with Rukshan Senadheera and S. Sirinayake for the 7th and 8th Respondents-Respondents.

Supported on : 23.05.2023

Decided on : 23.05.2023

Sobhitha Rajakaruna J.

The learned Counsel for the Interventient Petitioner Mr. Suren Fernando made submissions in support of the Petition dated 24.03.2023. The learned Deputy Solicitor General and the learned President's Counsel Dr. Romesh de Silva and the learned President's Counsel Mr. Sanjeewa Jayawardena made submissions opposing the said Application made by the Interventient Petitioner of the said Petition dated 24.03.2023. The Petitioner-Respondent, the Public Utilities Commission of Sri Lanka is absent and unrepresented.

My brother and I have no doubt that Mr. J. W. M. Janaka P. K. Ratnayake (Interventient-Petitioner) was in Court on the date the application bearing No. CA/Writ/37/2023 was supported and my brother and I very well recall that we posed certain questions to the said Mr. Ratnayake and those questions were answered through his Counsel in open Court.

By way of the Petition dated 24.03.2023, the said Mr. Ratnayake who is the Interventient-Petitioner seeks permission to intervene in the main Application bearing No. CA/Writ/56/2023 and also seeks for an order from this Court to get certain findings of the order dated 10.02.2023 of this Court as described in paragraph (c) of the prayer of the said Petition, expunged.

The learned Counsel for the Interventient-Petitioner strenuously submits that the Court of Appeal has the inherent powers to correct errors of its own orders or judgments. The learned Counsel for the Interventient-Petitioner contends that the findings of this Court in the said order dated 10.02.2023 includes certain remarks on the proxy purportedly filed on behalf of the Petitioner-Respondent or on behalf of the said Mr. Ratnayake. He asserts that making any remark against the said Mr. Ratnayake without giving him an opportunity to respond would amount to a violation of natural justice. The learned Counsel for the Interventient-Petitioner relies on the Judgments in *Sivapathaligam vs. Sivasubramaniam (1990) 1 Sri. L.R. 378*; *Jeyaraj Fernandopulle vs. Premachandra De Silva and others (1996) 1 Sri. L.R. 70*; *Ganeshanantham vs. Vivienne Goonewardene and three others (1984) 1 Sri. L.R. 319* and *Gunasena vs. Bandaratileke (2000) 1 Sri. L.R. 292*.

This Court clearly observes that no appeal has been lodged against the said order dated 10.02.2023 and also no leave to appeal application has been made under the Supreme Court Rules.

Having considered the submissions made by all the Counsel and the circumstances of this case, this Court is of the view that there are no sufficient grounds to review or revise or vary the order made by this Court on 10.02.2023 and also to exercise our inherent powers in this regard. We are guided by the general rule adopted by our Courts that 'once an order is passed and entered or otherwise perfected in accordance with the practice of the Court which passed the order is *functus officio* and cannot set aside or alter the order however, wrong it may appear to be - that can only be done in appeal'. We draw our attention to the judicial precedent enunciated in *Navaroach vs. Shrikanthan and others (1997) 1 Sri. L.R. 286* and *Sirimavo Bandaranaike vs. Times of Ceylon Limited (1995) 1 Sri. L.R. 22*.

It is important to draw the attention to the contents of paragraph 8 of the Petition dated 24.03.2023. This Court is of the view that the Interventient-Petitioner has submitted his Application based on the grounds mentioned in the said paragraph 8 of the Petition. It appears that he has filed the said Petition on the alleged grounds that the findings made by this Court are prejudicial to the rights and interests of the Interventient-Petitioner personally as, inter alia, demonstrated by the document 'IP3'.

We are of the view that there is no correction to be made or any variation to be made to the order dated 10.02.2023 as there is no error made by this Court through oversight, inadvertence or want of care. Hence, having regard to the definition of the *per incuriam*, the order dated 10.02.2023, the facts and the circumstances of the instant case do not warrant the exercise of inherent powers of this Court. At this stage, we draw our attention to the judgement in *Kariawasam vs. Priyadharshani (2004) 1 Sri. L.R 189* which analyzes the *per incuriam* rule and also the judgement in *Mahagamage Chandrasena alias Chandrasiri of Bamunugedera-Kurunegala vs. Abdul Hasan Mohomed Iqbal and others, SC HC CA LA No. 128/2014 decided on 17.02.2017*.

Moreover, we find no legal basis to allow the Application of the Interventient-Petitioner of Petition to intervene into the main application bearing Case No. CA/Writ/56/2023 which is now duly concluded. We cannot contribute to any application which leads to the abuse of process of Court.

Based on such circumstances, we proceed to dismiss the Application made by the Interventient-Petitioner in the Petition dated 24.03.2023.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal