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

1. Ahamed Lebbe Mohamed Mukthar,
   452 B/1, Main Street,
   Saithamaruthu - 16.

**PETITIONER**

**CA No. CA/Writ/0530/2019**

v.

1. Justice N. E. Dissanayake**,**
   Chairman,
   Administrative Appeals Tribunal,
   No. 35, Silva Lane,
   Rajagiriya.

2. A. Gnanathasan,
   Member,
   Administrative Appeals Tribunal,
   No. 35, Silva Lane,
   Rajagiriya.

3. G. P. Abeykeerthi,
   Administrative Appeals Tribunal,
   No. 35, Silva Lane,
   Rajagiriya.

4. M. A. Daya Senerath

Secretary,
Public Service Commission
1200/9, Rajamalwatte Road,
Battaramulla.

5. D. M. S. Abey Gunawardene,
Chief Secretary,
Eastern Provincial Council,
Trincomalee.

6. C. Punniyamoorthi
Inquiry Officer,
No. 36, Station Road.
Batticaloa.

7. A. Naveeswaran
Prosecuting Officer,
Assistant District Secretary,
District Secretary,
Batticaloa.

8. Hon. Governor
Governor of the Eastern Province,
Governor Secretariat, Eastern Province,
Trincomalee.

**RESPONDENTS**

**BEFORE** : M. Sampath K. B. Wijeratne J. &
M. Ahsan. R. Marikar J.

**COUNSEL** : A. Gunawardana for the Petitioner.

N. Wigneswaran, DSG for the 1st – 5th and 8th Respondents.

**DECIDED ON** : 20.10.2023

**M. Sampath K. B. Wijeratne J.**

## Introduction

The Petitioner instituted these proceedings seeking *inter-alia,* a writ of *certiorari* quashing the disciplinary order of the 5th Respondent dated 9th January 2017, ('P 13'), a writ of *certiorari* quashing the order of the Public Service Commission (hereinafter referred to as the 'PSC') dated 27th April 2018, ('A 1'), a writ of *certiorari* quashing the order of the Administrative Appeals Tribunal (hereinafter referred to as the 'AAT') dated 8th October 2019 ('P 17')[1] and a writ of *mandamus* compelling and/or directing the 5th Respondent and/or the 6th Respondent to reinstate the Petitioner with effect from 15th December 2018, with all fringe benefits.

The matter was fixed for argument after the pleadings were complete. When the matter was taken up for argument on the 13th of June 2023, the learned Deputy Solicitor General for the 1st to 5th and 8th Respondents raised the following preliminary objections regarding the maintainability of the Petitioner's application. The objections mentioned above are,

(a) This Court has no jurisdiction to hear and determine this application since the reliefs are sought in violation of Article 61A of the Constitution.

(b) The Petitioner's application is *res judicata,* subject to issue estoppel, or abuse of process, and therefore, should be dismissed *in limine.*

(c) The Petitioner is guilty of suppression and/or misrepresentation of material facts and therefore, the application should be dismissed *in limine*.

Both parties made oral submissions on the preliminary objections and thereafter, moved to tender written submissions as well. The Court allowed the application. As agreed, the Respondents filed their written submissions first and the Petitioner filed his reply written submissions thereafter. Consequently, the matter was fixed for the order of the Court.

[1] Case No. AAT/37/2018 (PSC).

**Analysis**

I will now proceed to examine the preliminary objections raised by the Respondents under the three headings mentioned earlier.

**(a) This Court has no jurisdiction to hear and determine this application since reliefs are sought in violation of Article 61A of the Constitution.**

Article 61A of the Constitution provides that '*no Court or Tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by a Commission, a Committee, or any Public Officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to Committee or Public Officer, under this chapter or under any other law*'.

Nevertheless, Article 61A of the Constitution is subject to the provisions of Articles 59 and 126 of the Constitution. Therefore, an order of the PSC can be challenged by way of an appeal to the Administrative Appeals Tribunal or by way of an application to the Supreme Court under Article 126 on an infringement of fundamental rights. As a result, the PSC's decision is not completely immune to legal proceedings.

However, it is settled law that the Constitutional ouster in Article 61A precludes the Court of Appeal from calling into question the validity of a decision of the PSC[2]. Even the Petitioner acknowledged that the relief prayed for under prayer (c) cannot be granted in view of Article 61A of the Constitution.

In light of the above, I hold that the Petitioner is not entitled to maintain prayer (c) of the prayer of the Petition.

However, in the instant application, the reliefs sought by the Petitioner are not confined to the decision of the PSC. The Petitioner also seeks to quash the decision of the AAT and the disciplinary order. A writ of *mandamus* is also sought compelling the 5th and 6th Respondents to reinstate the Petitioner.

[2] *Delapola v. Chairman, Administrative Appeals Tribunal and others*, (C.A.) [2019] 3 Sri L.R. 98, *Hewa Pedige Ranasingha and others v. Secretary Ministry of Agriculture Development and others,* SC Appeal No. 177/2013: S.C. minutes dated 18th July 2018, *L.D.C. Jayanatha Kumara v. Thilak Collure, Secretary, Ministry of Transport,* CA. Writ No. 362/2009, Court of Appeal minutes dated 3rd June 2021, *Gamini Dayarathna v. P.B. Wickremarathna and others,* CA. Writ No. 347/2018, Court of Appeal minutes dated 30th April 2021.

In the case of *Rathnayake v. Administrative Appeals Tribunal and others* (S.C.)[3] it was held that AAT is not a body exercising any power delegated to it by PSC, and is an appellate tribunal constituted in terms of Article 59 (1) of the Constitution. Therefore, the Court of Appeal has the jurisdiction to hear and determine the application filed against the order of the AAT.

Furthermore, in the case of *Wickremasingha Arachchilage Waruna Sameera v. Justice S. I. Imam*[4] (C.A.) His Lordship Samayawardhene J., (as His Lordship then was) held that Section 8 (2) of the Administrative Appeals Tribunal Act which reads that *'a decision made by the tribunal shall be final and conclusive and shall not be called in question in any suit or proceedings in a Court of law'* is a statutory ouster clause, and not a Constitutional ouster clause and therefore, does not operate as a blanket prohibition on the Court of Appeal to exercise writ jurisdiction over the decisions of the Administrative Appeals Tribunal[5].

It was further observed that although the decision of the PSC is immune from the jurisdiction of this Court, the decision of the AAT on an appeal from the decision of the PSC is subject to the jurisdiction of this Court. Consequently, the apparent result is that if the decision of the AAT is removed by this Court, there is nothing for the PSC to implement.

In my view, such ouster clauses are only to prevent parties from directly challenging the decision of the PSC in this Court, without resorting to the statutory right of appeal provided to the AAT in terms of Article 59 of the Constitution and Section 3 of the Administrative Appeals Tribunal Act. The fact that the Legislature has not introduced a similar ouster clause against the decision of the AAT supports this point of view.

Accordingly, if not for the reasons stated below in this order, the Petitioner has the right to maintain relief (b) in the Petition.

**(b) The Petitioner's application is *res judicata*, subject to issue estoppel or abuse of process and therefore, should be dismissed *in limine*.**

As already stated above in this order, the order of the AAT falls within the jurisdiction of this Court. An order of the AAT originates from the order of

[3] SC/SPL/LA/173/2011, Supreme Court minutes dated 22nd February 2013, [2013]1 Sri L.R. 331.
[4] CA.Writ 73/2016.
[5] See also *Locomotive Operators Engineers Union and others v. Justice N.E. Dissanayake (Chairman)Administrative Appeals Tribunal and others*, CA. Writ 339/2019, Court of Appeal minutes dated 22nd September 2021.

the PSC that is appealed to the AAT. The PSC makes its order on a decision appealed to the PSC.

In this instance, consequent to a preliminary investigation, the Petitioner was served with the chargesheet 'A 3'. The Petitioner challenged the *vires* of the chargesheet at the very outset. Nevertheless, the inquiry proceeded and the Petitioner was found guilty ('P 7'). The Petitioner appealed to the PSC therefrom and the PSC dismissed the Petitioner's appeal ('A 1'). The Petitioner assailed the *vires* of the charge sheet in a fundamental rights application ('R 1 O')[6] even before the disciplinary order ('A 6') was made. The Respondents tendered a list of cases filed by the Petitioner in connection with the matter in issue, marked as ('R 1'). However, the Respondent drew the specific attention of this court only to three fundamental rights applications filed in the Supreme Court. In two of these fundamental rights applications, the Supreme Court refused to grant leave to proceed[7].

Thereafter, the Petitioner again challenged the *vires* of the chargesheet in the fundamental rights application No. SCFR/01/2019 ('R 1 Y') after the PSC made its determination. However, this application was withdrawn by the Petitioner[8]. The Petitioner exercised his right of appeal to the AAT as well against the order of the PSC ('P 16'). Furthermore, the Petitioner instituted writ application No. HCK/WRT/ 229/2018 ('R 1 U') in the provincial High Court of Kalmunei, well after the decision of the PSC, challenging the letter by which the Secretary to the Ministry of Education, Eastern province, informed the Petitioner that the order of the previous disciplinary inquiry will remain in effect until the date specified in the letter. However, the Court dismissed the Petitioner's application ('R 1 V'). After that, another writ application bearing No. HCK/WRT/236/2018 was instituted in the provincial High Court of Kalmunei ('R 1 W') against the disciplinary inquiry report but, the Court also dismissed the application ('R 1 X').

Accordingly, it is clear that the Petitioner having exercised his legitimate right of appeal to the AAT against the order of the PSC, has made several attempts to challenge the *vires* of the proceedings taken place prior to the PSC decision. However, the Petitioner has not disclosed these facts in his application to this Court.

[6] SCFR/ 168/2016.
[7] Paragraph 52 of the Petitioner's Witten submission.
[8] Paragraph 51 of the Petitioner's Written submission.

Consequently, the Respondents argued that the essence of the Petitioner's application is *vires* of the charge sheet. Therefore, 'issue estoppel' operates against the Petitioner and the matter is *res judicata*.

In consideration of the issue of *res judicata,* it is important to observe that the Supreme Court as well as the Court of Appeal has recognised the right of a party to institute parallel proceedings in the Supreme Court invoking fundamental rights jurisdiction and, in this Court, invoking the writ jurisdiction on identical 'cause of action'.

In the case of *Shanthi Chandrasekaram v. D.B. Wijethunga and others*[9] (S.C.) His Lordship Mark Fernando J., stated as follows;

'*Article 126(1) confers sole and exclusive jurisdiction in respect of infringements of fundamental rights, and Article 126(2) prescribes how that jurisdiction may be invoked. Article 126(3) is not an extension of or exception to those provisions; if a person who alleges that his fundamental rights have been violated fails to comply with them, he cannot smuggle that question into a writ application in which relief is claimed on different facts and grounds, and thereby seek a decision from this Court. On the other hand, there could be transactions or situations in which, on virtually the same facts and grounds, a person appears entitled to claim relief from the Court of Appeal through a writ application under Article 140 or 141 and from this Court by a fundamental rights application under Article 126. Since those provisions do not permit the joinder of such claims, the aggrieved party would have to institute two different proceedings, in two different courts, in respect of virtually identical "causes of action" arising from the same transaction, unless there is express provision permitting joinder. The prevention, in such circumstances, of a multiplicity of suits (with their known concomitants) is the object of Article 126(3).*'

On the same matter, His Lordship Janak de Silva made the following observations in the case of *Saundra Marakkala Imasha Lahiruni Upeksha and others v. Hasitha Kesara Weththimuni and others*[10];

'*Thus, it is possible that there could be transaction or situations where a party can seek remedies both in the Supreme Court, invoking the fundamental rights*

[9] [1992] 2 Sri L.R. 297.
[10] CA/Writ/166/2017, Court of Appeal minute dated 4th April 2019 at page 9.

*jurisdiction, and this Court, invoking the writ jurisdiction on virtually identical causes of action…*'

In the case of *Nigamuni Piyuji Rasanja Mendis v. University of Kelaniya and thirty-six others*[11] His Lordship Sobhitha Rajakaruna J., citing the aforementioned two judgments went on to observe that;

'*However, if a person who seeks redress from Supreme Court alleges that his fundamental rights have been infringed,* ***he cannot smuggle that question into a writ Application parallelly by seeking reliefs on different facts and grounds abusing the process of Court*** *and also without satisfying the Court of Appeal with adequate and sufficient reasons.*' (Emphasis added)

As such, in light of the aforementioned judicial pronouncements, I will now proceed to examine the factual basis for the relief sought in both the fundamental rights application SCFR 32/2017 ('R 1 T') and the instant application. In both applications, the Petitioner puts in issue *inter-alia* the validity of the charge sheet and the subsequent disciplinary order delivered on the said charge sheet. I concede that the Petitioner has raised additional points in both applications to challenge the validity of the charge sheet. However, it is a fundamental principle adopted in Courts that a party should include the whole of the claim in an action.

In the case of *Wijesinghe v. Aslin Nona* [12] the Supreme Court at that time cited the following judicial dicta of Wigram, V.C. in the case of *Henderson v. Henderson* (843) 3 Hare 114 on the principle of *res judicata*:

*'Where a given matter becomes the subject of litigation in and of adjudication by a Court of competent jurisdiction,* ***the Court requires the parties to that litigation to bring forward their whole case*** *and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the*

[11] CA/Writ/90/2021 together with CA/Writ/101/2021, Court of Appeal minutes dated 2nd August 2023 at page 12.
[12] 80 N.L.R. 213.

*subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.'*

The above principle had been recognised by this Court in a writ application in the aforementioned case of *Nigamuni Piyuji Rasanja Mendis v. University of Kelaniya and thirty-six others*[13]

In the case of *Senadheera and Seven others v. U.G.C. and Two others*[14] (C.A.) His Lordship Arjuna Obeysekara J., P/CA (as His Lordship then was) dealing with a case where the Petitioners invoked the writ jurisdiction of the Court of Appeal in respect of a matter that leave to proceed had already been refused by the Supreme Court, held that the Petitioner who has had a full hearing before the Supreme Court certainly cannot seek to re-agitate the same issue before the Court of Appeal.

In the case of *Ensen Trading and Industry (Pvt) Ltd v. Mangala Samaraweera and others,*[15] this Court cited the following passage from *Brunswick Rail Co. v. British and French Trust Corporation Ltd*[16] concerning the doctrine of estoppel.

'*The doctrine of estoppel is one founded on considerations of justice and good sense. If an issue has been distinctly raised and decided in an action, in which both parties are represented, it is unjust and unreasonable to permit the same issue to be re-litigated afresh between the same parties or persons claiming under them.*'

In *Vehicles Lanka (Private) Ltd and another v. Jagath Premalal Wijeweera, Director General of Customs and others*[17] His Lordship Malalgoda J., P/CA (as His Lordship then was) expressed the following views regarding 'issue estoppel'.

*'It is trite law that there needs to be finality to litigation and therefore* ***parties [are] estopped from bringing multiple suits on the same issues*** *resulting in overburdening the court.'*

In the aforementioned case of *Nigamuni Piyuji Rasanja Mendis v. University of Kelaniya and Thirty-six others*[18] His Lordship Sobhitha Rajakaruna J.,

[13] *Supra* note 11 at p. 7 and 8.
[14] CA. Writ 41/2021, Court of Appeal minutes dated 10th June 2021.
[15] CA. Writ 41/2019, Court of Appeals minutes dated 1st April 2019.
[16] [1939] AC 1 at pp. 19-20.
[17] CA. Writ No. 446/2014, Court of Appeal minutes dated 12th February 2016.
[18] *Supra* note 11.

explained *res judicata*, 'issue estoppel', and abuse of process in the following manner;

'*Res judicate takes two distinct forms: issue estoppel and cause of action estoppel. In brief terms**, issue estoppel prevents a litigant from raising an issue that has already been decided in a previous proceeding*[19]***.*** *Cause of action estoppel prevents a litigant from pursuing a matter that was or should have been the subject of a previous proceeding*[20]*. If the technical requirements of issue estoppel or cause of action estoppel are not met, it may be possible to invoke the doctrine of abuse of process to prevent re-litigation of matters*[21]*.'*

*'One circumstance in which abuse of process has been applied is where the litigation before the court is found to be in essence an attempt to relitigate a claim which the court has already determined.*' (Emphasis added)

The contention of the Respondent is that since the Supreme Court has refused to grant leave to proceed in fundamental rights applications No. SCFR 168/2016 ('R 1 O') and SCFR 32/2017 ('R 1 T'), the Petitioner is estopped from maintaining the instant application.

In reply, the Petitioner stated that the order of the AAT, the order impugned in this Court ('P 17'), was not challenged in any previous applications. Accordingly, it was argued that issue estoppel; the doctrine of *res judicata* would not apply in this instance.

His Lordship Janak de Silva J., in the aforementioned case of *Saundra Marakkala Imasha Lahiruni Upeksha and others v. Hasitha Kesara Weththimuni and others*[22] set out the following criteria that must be satisfied in establishing a plea of issue estoppel;

*i.* *Finality of the decision on the issue*
*ii.* *The determination must be fundamental, not collateral*
*iii.* ***Identity of parties***
*iv.* *Same Capacity*
*v.* ***Precisely the same and identical issues or question must have been decided.***

[19] Toronto (City) v. C.U.P.E., Local 79 2—3 SCC 63.
[20] Erschbamer v. Wallster, 2013 BCCA 76. See also Henderson v.Henderson (1843), 3 Hare 100, 67 E.R. 313 at 319.
[21] matters.'(R.v. Power, 1994 CanLII 126 (SCC), [1994] 1 S.C.R. 601, at p. 616), and as "oppressive treatment"
[22] *Supra* note 10.

*There is a further requirement that the particular issue should have been determined by a court of competent jurisdiction [Mills v. Cooper (1976) 2 Q.B. 459 at 468]'* (Emphasis added)

As mentioned earlier in this order, the order of the AAT is also impugned in this application. The said order had not been challenged in any of the previous applications filed by the Petitioner. It is the charge sheet and the preliminary investigation report that were impugned in the fundamental rights application No. SCFR 168/2016 ('R 1 O') and the Supreme Court refused to grant leave to proceed. In the fundamental rights application No. SCFR 32/2017 ('R 1 T') the charge sheet, the formal disciplinary inquiry report, and the disciplinary order were challenged. Thus, the disciplinary order challenged in this application under prayer (d) has been put into issue in the later fundamental right application. The Supreme Court considered the question of the validity of the disciplinary order based on the charge sheet and the formal disciplinary inquiry, refused to grant leave to proceed.

Considering the applicability of the principle of *res judicata* in the form of issue estoppel, I will move forward to examine the two questions whether (a) the Petitioner has cited the same parties as Respondents in the relevant fundamental rights application and (b) whether the reliefs sought by the Petitioner in the fundamental rights application and in the instant application are same or so clearly part of the subject matter. In my view, the other ingredients set out in the aforementioned case of *Saundra Marakkala Imasha Lahiruni Upeksha and others v. Hasitha Kesara Weththimuni and others*[23] are essentially fulfilled.

As stated above, the Petitioner has sought to quash the disciplinary order in both applications. The facts concerning the disciplinary order are almost the same[24].

The parties are not identical but, the Chief Secretary who issued the disciplinary order ('A 6'), the 5th Respondent in the instant application, is the 3rd Respondent in the fundamental rights application. The 6th Respondent Inquiring Officer is the 5th Respondent in the fundamental rights application. The Prosecuting Officer, the 7th Respondent, is the 6th Respondent, and the

[23] *Supra* note 10.

[24] Vide paragraphs 11 to 14,16 to 18,23,39,48 of the Petition and paragraphs 9 to 11,13,14 25, 37 to 39, 44,50, of the Petition filed in SCFR No. 32/2017.

Governor, the 8th Respondent, is the 7th Respondent in the fundamental rights application. Therefore, the Respondents concerning the disciplinary order are the same in both applications. In the instant application, the Chairman, the members, and the Secretary to the AAT are also named as 1st to 4th Respondents concerning the relief (b), the writ of *certiorari* prayed against the AAT order. Similarly, in the fundamental right application SCFR 32/2017, there are other Respondents who are named as Respondents concerning the other reliefs sought in the Petition.

Nevertheless, in my view, the parties concerned are the same in both applications in respect of the relief sought against the disciplinary order.

In the case of *Wijesinghe v. Aslin Nona* [25] the then Supreme Court observed that;

'*The rule of* ***res judicata is not confined to issues which the Court is actually asked to decide, but it covers issues or facts which are so clearly part of the subject matter of the litigation*** *and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them.*" *– per Somerville*, *L.J. in Greebhalgh v. Mallard* (1947) 2 All E.R. 255.

The Petitioner appealed the disciplinary order to the PSC and the PSC having considered the Petitioner's appeal proceeded to dismiss the same ('A 1'). Thereafter, the Petitioner appealed the decision of the PSC to the AAT, and the AAT having considered the appeal of the Petitioner on its own merits dismissed the same by its order 'P 17'. Accordingly, it is apparent that the PSC as well as the AAT has arrived at their conclusion on the merits of the appeal before them.

On the above analysis, I hold that the AAT order had not been decided on its merits by a competent Court. Hence, I hold that relief (b) of the prayer of the Petition, the application for a writ of *certiorari* to quash the order of the AAT, is not subject to issue estoppel and therefore, not *res judicata*.

Nevertheless, in view of the aforementioned facts, I am content with that in both, the aforementioned fundamental rights application and the instant application, the Petitioner has sought relief in respect of the disciplinary order; on the same facts and between the same parties. The Petitioner has failed to demonstrate any valid grounds upon which his application falls outside the

[25] *Supra* note 12.

judicial dicta mentioned above. Consequently, I hold that the relief (d) of the prayer of the petition is *res judicata.*

**(c) The Petitioner is guilty of suppression and/or misrepresentation of material facts and therefore, the application should be dismissed *in limine*.**

The Respondent alleged that the Petitioner is guilty of serious suppression and misrepresentation of facts by failing to provide details of all cases filed by the Petitioner in connection with the matter in issue. However, as it was observed by His Lordship Janak de Silva J., in the case of *Wickremasinghe Arachchilage Bhathiya Indika Wickremasinghe v. Land Commissioner General*[26] *'it is* ***not every suppression or misrepresentation of fact that will be detrimental to a Petitioner*** *in an application for judicial review.* ***It must be a material fact*** *and this depends on the facts and circumstances of each case.'* (Emphasis added)

Therefore, I now proceed to examine whether the Petitioner has suppressed any material facts. As I have already stated above, in addition to the order of the AAT, the Petitioner also seeks to quash the disciplinary order made against the Petitioner[27]. In the aforementioned fundamental rights application No. SCFR 32/2017 ('R 1 T') the Petitioner pleaded that the disciplinary order based on the report of the formal disciplinary inquiry against the Petitioner is discriminatory and *ultra-vires,* therefore, it is null and void[28]. Accordingly, the Petitioner relied on identical grounds in support of his claim of violation of fundamental rights. The Supreme Court refused to grant leave to proceed. Therefore, in my view, those facts are material to the instant writ application filed by the same Petitioner. However, the Petitioner did not disclose the said material fact in his Petition. As it was correctly pointed out by the Respondents, the Petitioner has disclosed the previous applications instituted by him in the other applications filed by him. For instance, in CA/Writ 191/2015 ('R 1E') the Petitioner disclosed Case No. EPHCK/Writ /124/2014, the previous writ application filed in the provincial High Court of the Eastern province at Kalmunei[29]. Furthermore, in the Petition filed in fundamental rights application No SCFR/168/2016 ('R 1 O') at paragraph 55, the Petitioner

[26] CA. Writ 381/2017, Court of Appeal minutes dated 12th May 2020.
[27] Paragraph (d) of the prayer of the Petition.
[28] Payer (f) of the Petition filed in SCFR application No. 32/2017 ('R 1 T').
[29] At paragraph 43 and 44.

disclosed the previous applications filed by him. Also, in the Petition filed in the fundamental rights application No. SCFR 32/2017 ('R 1 T') at paragraph 58, Petitioner disclosed seven previous applications filed by him in connection with the matter in issue. In the Petition filed in the fundamental application SCFR 361/2016 ('R 1 R') the Petitioner disclosed seven previous applications filed by him[30]. Hence, it is clear that the Petitioner had been well aware of the necessity to disclose the previous applications filed by him material to the subsequent application. However, in this instance, the Petitioner has not disclosed any of those previous applications in his Petition. As stated above in this order, the fundamental rights application No. SCFR 32/2017 ('R 1 T) is directly relevant to the instant writ application.

In the case of *Collettes Ltd. v. Commissioner of Labour and others*[31] Gunawardene, J. held that *'it is essential that, when a party invokes the Writ jurisdiction or applies for an Injunction to this Court, all facts must be clearly, fairly, and fully pleaded before the Court, so that Court would be made aware of all the relevant matters. It is necessary that this procedure must be followed by all litigants who come before this Court in order to ensure that justice and fair play would prevail……'*

In *Alponso Appuhamy v Hettiarachchi*[32] Pathirana, J. held that '*The necessity of full and fair disclosure of all the material facts to be placed before the Court when, an application for a writ or injunction, is made and the process of the Court is invoked is laid down in the case of the King v. The General Commissioner for the purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmorbd de Poigns*[33]*. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case, a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of*

[30] At paragraph 40 of the Petition.
[31] CA. Application No. 77/88, at p. 17, decided on 16th May 1989.
[32] 77 N.L.R. 131 at p. 135.
[33] K vs The General Commissioner for the purpose of Income Tax Acts for the District of Kensington - Ex parte Princess Edmorbd de Poignal - (1917) KG Div. 486.

*the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination'.*

In *Jayasinghe v. The National Institute of Fisheries and Nautical Engineering (NIFNE) and others*[34]

*'……Therefore, the conduct of the petitioner in withholding these material facts from Court shows a lack of uberrima fides on the part of the petitioner. When a litigant makes an application to this Court seeking relief, he enters into a contractual obligation with the Court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly. This is a duty cast on any litigant seeking relief from Court. In the case of Blanca Diamonds (Pvt) Limited v. Wilfred Van Els and Two Others,* [1997] 1 Sri L.R. 360 *the Court highlighted this contractual obligation which a party enters into with the Court, requiring the need to disclose uberrima fides and disclose all material facts fully and frankly to Court. Any party who misleads Court, misrepresents facts to Court or utters falsehood in Court will not be entitled to obtain redress from Court. It is a well-established proposition of law, since Courts expect a party seeking relief to be frank and open with the Court. This principle has been applied even in an application that has been made to challenge a decision made without jurisdiction. Further, Court will not go into the merits of the case in such situations*[35]*. Vide Rex v. Kensington Income Tax Commissioners; Princess Edmond De Polignac Ex-Parte* - (1917) 1 KB 486[36].

*... In the result,[1] on both these aforesaid points, I hold that the petitioner has failed to make a full and frank disclosure of all material facts. Hence, by this conduct the petitioner had violated his contractual obligation to Court to disclose uberrima fides…. Accordingly, I proceed to dismiss and reject the [280] application…*[37]*'*

In *Dahanayake and others v. Sri Lanka Insurance Corporation Ltd. and others*[38] it was observed that,

*'……. Our Courts have time and again emphasised the importance of full disclosure of all material facts at the time a Petitioner seeks to invoke the*

[34] [2002] 1 Sri L. R. 277.
[36] Ibid at p. 286.
[37] Ibid at p. 287.
[38] [2005] 1 Sri L.R. 67, at p. 77.

*jurisdiction of this court, by way of writ of certiorari, mandamus or any of the other remedies referred to in Article 140 of the Constitution.'*

Based on the analysis above, I hold that non-disclosure of the previous applications filed by the Petitioner, especially the fundamental rights application No. SCFR 32/2017 in the Petition constitute a suppression of material facts.

As a consequence, I would hold that the application of the Petitioner must fail. Thus, the application is dismissed. No costs.

**JUDGE OF THE COURT OF APPEAL**

**M. Ahsan. R. Marikar J.**

I Agree.

**JUDGE OF THE COURT OF APPEAL**