

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 a  
Writs of Certiorari and Prohibition.*

Maxwell de Silva  
Secretary General,  
National Olympic Committee,  
No. 100/9 F,  
Independence Avenue,  
Colombo 7.

PETITIONER

CA Writ 25/2025

Vs.

1. Hon. Sunil Kumara Gamage  
Minister of Youth Affairs and Sports,  
No. 9, Phillip Gunawardena Mawatha,  
Colombo 7.
2. A.H.M.U. Anura Bandara  
Secretary,  
Ministry of Youth Affairs and Sports,  
No. 9, Phillip Gunawardena Mawatha,  
Colombo 7.
3. Surendran Subramaniam  
President,  
National Olympic Committee,  
No. 100/9 F,

Independence Avenue,  
Colombo 7.

4. Gamini Jayasinghe  
Treasurer,  
National Olympic Committee,  
No. 100/9 F,  
Independence Avenue,  
Colombo 7.
5. Joseph Kenny  
Vice President,  
National Olympic Committee,  
No. 100/9 F,  
Independence Avenue,  
Colombo 7.
6. Niloo Jayatilake  
Vice President,  
National Olympic Committee,  
No. 100/9 F,  
Independence Avenue,  
Colombo 7.
7. Suranjith Premadasa  
Vice President,  
National Olympic Committee,  
No. 100/9 F,  
Independence Avenue,  
Colombo 7.
8. Kanchana Jayaratne  
Vice President,  
National Olympic Committee,  
No. 100/9 F,  
Independence Avenue,  
Colombo 7.
9. Chandana Liyanage  
Assistant Secretary,

National Olympic Committee,  
No. 100/9 F,  
Independence Avenue,  
Colombo 7.

10. Shirantha Peiris  
Assistant Treasurer,  
National Olympic Committee,  
No. 100/9 F,  
Independence Avenue,  
Colombo 7.
11. Sarath Hewawitharana  
Member, Executive Board,  
National Olympic Committee,  
No. 100/9 F,  
Independence Avenue,  
Colombo 7.
12. Sarath Ruwan Alahakoon  
Member, Executive Board,  
National Olympic Committee,  
No. 100/9 F,  
Independence Avenue,  
Colombo 7.
13. Niluka Karunaratne  
Member, Executive Board,  
National Olympic Committee,  
No. 100/9 F,  
Independence Avenue,  
Colombo 7.
14. Rear Admiral (Prof.) Shemal Fernando  
Director General of Sports,  
Department of Sports Development,  
No. 9, Phillip Gunawardena Mawatha,  
Colombo 7.

15. Wanniarachchige Jagath Hemantha Fonseka  
No. 125/41, Takshila Uyana,  
Pannipitiya Road,  
Battaramulla.
16. N.R.M. Dharmasiri  
No.30/7A, Mawathgama,  
Homagama.
17. Dinal Phillips, PC,  
No. 26,  
Charles Place,  
Colombo 3.
18. Seevali Jayawickrema  
No. 26,  
Charles Place,  
Colombo 3.
19. Ashan Stanislaus  
No. 26,  
Charles Place,  
Colombo 3.

#### RESPONDENTS

Before	:	Dhammadika Ganepola, J. Damith Thotawatta, J.
Counsel	:	Ikram Mohamed, PC with Roshaan Hettiarachchi, Chamath Jayasena and H. Balakrishnan instructed by Maduranga Gamage for the Petitioner. Manohara Jayasinghe, DSG for the 1 <sup>st</sup> and 2 <sup>nd</sup> Respondents. Dr. Romesh De Silva, PC with Niran

Anketell and Vasanthakumar Niels  
instructed by Sanath Wijewardena for the  
3<sup>rd</sup> and 6<sup>th</sup> Respondents.

Hijas Hisbullah with Piyumi Seneviratne  
instructed by Eranga Pinnaduwa for the  
9<sup>th</sup> Respondent.

**Argued on** : 03.03.2025, 12.03.2025, 19.03.2025

**Decided on** : 30.04.2025

### **Dhammika Ganepola, J.**

The Petitioner, the Secretary General of the National Olympic Committee of Sri Lanka [NOCSL] has filed this application seeking *inter alia* Writs in the nature of Writs of Certiorari to quash the documents marked P1 dated 04.09.2024, P2 dated 10.01.2025, P3 dated 12.01.2025 and P4 dated 15.01.2025 and a Writ in the nature of Writ of Prohibition prohibiting the 3<sup>rd</sup> Respondent preventing the Petitioner from functioning as and/or interfering with the functions of the Petitioner as the Secretary General of the NOCSL.

When this matter was taken up for support on 24.01.2024, having heard the submissions made by the learned President's Counsel for the Petitioner, the Court issued formal notices on the Respondent after being satisfied that there is a matter to be looked into at the stage of hearing. After issuing the formal notices on the Respondents, the learned President's Counsel for the Petitioner supported the application for the interim reliefs prayed for in the prayer, moving the Court to issue an interim order pending the hearing and determination of this application:

- i. suspending the operation of, and/or recommendations contained in, the document marked P1 made by the members of the Ethics Committee; and/or

- ii. suspending the purported approval granted by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent to suspend the Petitioner by letter marked P2 and operation of said letter; and/or
- iii. suspending the operation of the directions and/or prohibitions contained in the letters marked P3 and P4, except in respect of the Petitioner's functions/activities at the Olympic Council of Asia.

The learned D.S.G. for the 1<sup>st</sup>, 2<sup>nd</sup>, and 13<sup>th</sup> to 16<sup>th</sup> Respondents, the learned President's Counsel for the 3<sup>rd</sup> and 6<sup>th</sup> Respondents, and the learned Counsel for the 9<sup>th</sup> Respondent made submissions opposing the application. The scope of this order is limited to considering whether such an interim application should be allowed or not.

The factors guiding the issuance of interim orders include the existence of a *prima facie* case, the potential for irreparable injury, the balance of convenience, and the appropriateness of the case. The Indian Supreme Court in the case of *Bank of Maharashtra v. Race Shipping and Transport Co. Prv Ltd AIR 1995 SC 1368* has deprecated the practice of granting of interim orders which practically give the principal relief sought in the Petition for no better reason than that a *prima facia* case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations.

At the outset, it must be noted that this is a situation where the Petitioner seeks interim relief after the Court has issued formal notices on the Respondents, being satisfied that there is an appropriate matter to be looked into. However, the mere fact that the Court has been satisfied that there is an appropriate question on which the case can properly proceed does not necessarily be considered as a cause for the issuance of interim relief as prayed. Certain other factors also need to be considered in considering an application for interim relief.

In the case of *F Hoffmann La-Roche Ltd and Another vs National Medicine Regulatory Authority and Others [CA (Writ) Application No. 98/2016; CA Minutes of 22<sup>nd</sup> June 2016]*, the Court has observed that:

*"If the argument of the Learned Counsel for the petitioners that court should extend the operation of the interim relief it had granted, on the basis that the petitioners have made out a 'Prima facie sustainable case', is to be accepted, this court will have to issue interim reliefs every time it decides to issue notices on the respondents. This is because court decides to issue notices on the respondents since it is satisfied that there is a prima facie case to be looked into".*

In *Duwearachchi and Another v. Vincent Perera and Others [1984] (2) Sri LR 94*, this Court set out the following as the three matters that must be examined when considering an application for an interim order:

- (a) Will the final order be rendered nugatory if the petitioner is successful?
- (b) Where does the balance of convenience lie?
- (c) Will irreparable and irremediable mischief or injury be caused to either party?

This Court has consistently followed the decision in Duwearachchi in several cases, including in *Ceylon Tobacco Company PLC vs Hon. Maithripala Sirisena, Minister of Health and others [CA (Writ Application No. 336/2012; CA Minutes of 22<sup>nd</sup> February 2013]. Tokyo Super Cement Company Lanka (Private) Limited vs Sri Lanka Ports Authority and others, [CA (Writ) Application No. 258/2013; CA Minutes of 30<sup>th</sup> August 2013.] Nat Wealth Securities Lanka (Private) Limited vs The Monetary Board of the Central Bank and others [CA (Writ) Application No. 335/2015; CA Minutes of 29<sup>th</sup> March 2016.]*, *F Hoffmann La-Roche Ltd and another vs National Medicines Regulatory Authority and others [CA (Writ) Application No. 335/2015; CA Minutes of 29<sup>th</sup> March 2016.]* and *Wadugodage Wijeratne vs Faiszer Mustapha, Minister of Provincial Councils and Local Government and another. [CA (Writ) Application No. 373/2017; CA Minutes of 22<sup>nd</sup> November 2017].* Accordingly, the above principles have become the established guidelines regarding the issuance of interim relief.

## Will the Final Order be Rendered Nugatory if the Petitioner is Successful?

In the instant application the final reliefs which the Petitioner seeks are the Writs of Certiorari to quash the documents marked P1 dated 04.09.2024, P2 dated 10.01.2025, P3 dated 12.01.2025 and P4 dated 15.01.2025 and the Writ of Prohibition prohibiting the 3<sup>rd</sup> Respondent preventing the Petitioner from functioning and /or interfering with the functions of the Petitioner as the Secretary General of the NOCSL. The interim reliefs that the Petitioner seeks are to suspend the operation of the contents of the documents marked P1, P2, P3 and P4. Accordingly, the Court will have to consider whether not granting the interim reliefs would render the final order nugatory if the Petitioner is successful.

The document marked P1 contains the recommendations made by the Ethics Committee of the NOCSL to the NOCSL to take immediate action to suspend the Petitioner from holding the office of Secretary General of NOCSL pending investigation. The document P2 contain the approval granted by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent to suspend the Petitioner from holding the office of Secretary General of NOCSL with immediate effect. P3 is the letter issued by the 3<sup>rd</sup> Respondent suspending the Petitioner from holding the office of Secretary General of the NOCSL pending investigations. The Petitioner asserts that the document marked P4 is a letter issued by the 3<sup>rd</sup> Respondent, which interferes with the lawful duties and functions of the Petitioner. When considering the contents of the documents marked P3 and P4, it is apparent that the Petitioner has been suspended from holding office and barred from functioning in the office of the Secretary General of NOCSL pending investigations.

Hence, the Petitioner has sought a Writ of prohibition against the 3<sup>rd</sup> Respondent, preventing the Petitioner from functioning as the Secretary General of NOCSL and interfering with the duties and functions of the office that would deem the final relief rendered nugatory if the Petitioner is successful, unless the interim relief is issued. Accordingly, I am of the view that the Petitioner is able to pass the 1<sup>st</sup> hurdle of the test.

Where does the balance of convenience lie?

Where a Petitioner passes the aforesaid first test, the Court should then move to consider where the balance of convenience lies. In such circumstances, the Court must consider whether the harm that the Respondents may endure where the interim relief is granted is greater than the harm that the Petitioner may encounter if the same is denied. However, even if the Court determines that the Petitioner is entitled for the interim reliefs sought and that the Petitioner should function as the General Secretary of the NOCSL, considering the contents of the letter marked X8(C), it appears that the Petitioner will not be able to perform his duties functions in such office. Because the letter X8(C) provides that the International Olympic Committee expects that any NOCSL official who is currently under investigation or sanction will simply stay away from the NOCSL and has decided only to consider the communications addressed and signed by the President of the NOCSL on behalf of the NOCSL as per the letter marked X8(C). Hence, even if the Court decides to grant interim relief as prayed for, the Petitioner will not be able to perform duties as the General Secretary as the Petitioner expects. Thus, I view that no harm would be caused to the Petitioner if the interim reliefs sought are refused. Further, it was submitted that the Petitioner holding the office of the General Secretary of the NOCSL would impede the responsible authorities from carrying out an impartial and independent investigation against the Petitioner. Accordingly, I hold that the balance of convenience does not lie with the Petitioner.

Will irreparable and irremediable mischief or injury be caused to either party?

It is stated that the Petitioner is holding the post of Secretary General of NOCSL as an honorary office. There is no material to support the claim that the Petitioner would suffer any monetary loss and/or any non-pecuniary loss as a result of him been suspended from the said office. Further, it was submitted that owing to the fact that the internal disputes

and ethical issues raised by the Ethics Committee of NOCSL remained unaddressed, the International Olympic Committee (IOC) and the Olympic Council of Asia (OCA) have taken steps to suspend the funding to the National Olympic Committee except for direct payments to athletes benefiting from Olympic scholarships (see document X8(a)). Such suspension of funding would have a severe negative impact on NOCSL in various ways, such as training athletes and coaches, providing sponsorships for them and conducting educational programmes. Accordingly, it appears that no irreparable and/or irremediable mischief or injury would be caused to the Petitioner. However, such a suspension of funding would make an insufferable impact not only on the NOCSL but also on the national sports industry of Sri Lanka.

In the above circumstances, I hold that in the instant case, the balance of convenience does not lie with the Petitioner and that no irreparable and irremediable mischief or injury would be caused to the Petitioner where the interim reliefs are not granted. For the foregoing reasons, I see no reason to issue interim reliefs as prayed for in the prayer of the Petition. Accordingly, the application for interim relief is dismissed.

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal