

**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 a Writ of
Certiorari and Mandamus under and in
terms of Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka

CA (WRIT) 0272/2024

Commander M.S.D. Perera,
NRX 1229,
No. 220, Shanthasiri,
Wevita,
Bandaragama.

PETITIONER

Vs.

1. Commander of the Sri Lanka Navy,
Sri Lanka Navy Headquarters,
Sri Lanka Navy.

1A. Rear Admiral B.A.K.S. Priyankara
Banagoda, NRX 0568
Commander of Sri Lanka Navy
Sri Lanka Navy Headquarters
Sri Lanka Navy

2. Commodore L.A.R.D. Hettiarachchi,
NRX 0816,
President of the Court Martial,
Sri Lanka Navy Headquarters,
Sri Lanka Navy.

3. Commodore H.M.B.P. Rupasinghe,
NRX 0843,
Member of the Court Martial,
Sri Lanka Navy Headquarters,
Sri Lanka Navy.

4. Captain G.H.U.K. Munasinghe,

NRX 0937,
Member of the Court Martial,
Sri Lanka Navy Headquarters,
Sri Lanka Navy.

4A. Captain (G) A.M.D.Amarakoon,
NRX 0937
Member of the Court Martial
Sri Lanka Navy Headquarters
Sri Lanka Navy.

5. Commodore (LS) M.A.D.S.L. Kularatna,
NVA 5958,
Judge Advocate,
Sri Lanka Navy Headquarters,
Sri Lanka Navy.

6. Commodore (VNR) C. Goonesekara,
NVA 5872,
Former Judge Advocate,
Presently, Commissioner –
Commission to Investigate Allegations
of Bribery or Corruption,
No.36, Malalasekera Mawatha,
Colombo 7.

RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Shanvindra Fernando, PC with Thivanka Artigalla and
R. Fernandopulle for the Petitioner.

Chaya Sri Nammuni, DSG for the Respondents.

Written Submissions: By the Petitioner – 28-05-2025

By the Respondents – Not filed

Argued on : 15.05.2025.

Judgement On: 17.06.2025.

Dr. Sumudu Premachandra J.

1] The Petitioner seeks this Court to issue a writ of certiorari to quash the letter dated 4th March 2024 (P5) issued by 1st Respondent in appointing a new Judge Advocate to continue proceedings of the Court Martial again, the Petitioner and the order of the Court Martial dated 2nd April 2024 overruling the objection of the Petitioner for continuation of proceedings (P7B). He further prays for an interim order staying Court Martial proceedings, to set aside the Judge Advocate's summing up (P7A), and for a writ of mandamus compelling the 1st Respondent to dissolve the Court Martial under Section 42(3) of the Navy Act, along with costs and appropriate relief. With regard to the stay of proceedings, on 13/05/2024, the legal Officer of the Respondent agreed not to proceed the Court Martial against the Petitioner.

2]] The backdrop of this case has a long history. The Petitioner, a Commander in the Sri Lanka Navy, challenges the legality of his ongoing Court Martial proceedings initiated following allegations investigated by the Naval Provost and a Board of Inquiry. After receiving a charge sheet and other documents on 6th December 2020, the Court Martial began on 28th December 2020. An initial objection was raised against the appearance of President's Counsel, Mr. Shavindra Fernando on behalf of the Petitioner, which was later overruled by the Judge Advocate. However, the Court Martial disallowed the Counsel's appearance, prompting the Petitioner to file CA Writ No. 229/2021 seeking Certiorari, Mandamus, and Prohibition orders. The Court of Appeal, in its judgment on 24th February 2023, held that the arraignment was timely under Section 26 of the Navy Act, however, allowing the trial to continue and permitting the Counsel to appear on behalf.

3] A new Court Martial commenced on 7th June 2023. The Petitioner objected to amended charges under Section 104, and the Court of Appeal clarified on 27th July 2023 that the trial must proceed on the original charges under Section 69. During the resumed trial, the Judge Advocate was replaced without dissolving the Court Martial, the Petitioner now challenges that it is contrary to Section 42(3) of the Navy Act. The Petitioner raised a preliminary objection, arguing that the continuation without proper dissolution and appointing a new Court Martial is unlawful. This objection was dismissed by the ongoing Court Martial on 2nd April 2024. Being aggrieved to said refusal, this writ application lies.

4] In their objections, the 1st to 5th Respondents clarified the lawful composition of the court-martial and explained that the 6th Respondent was placed on unpaid compulsory leave upon appointment to the Commission to Investigate Bribery and Corruption.

5] They deny the allegations made by the Petitioner and say that all procedures were duly followed under the Navy Act, supported by preliminary investigation reports, Board of Inquiry findings, and rules of court martial (Annexures 1R3–1R14). They maintain that the court-martial was duly constituted, and that the substitution of a new Judge Advocate and amendment of charges were lawful and consistent with legal principles under the Navy Act and the Judicature Act, No 2 of 1978. The Respondents argue that Section 42 only applies to health-related issues, such as illness or death, and should be interpreted using the *ejusdem generis* rule. They contended that the court-martial need not dissolve for other reasons and emphasize that the convening authority has discretion to determine necessity. However, they acknowledge that dissolution may occur upon the Judge Advocate's death but argue it is not mandatory.

6] The Respondents further argue that the Petitioner has raised only technical objections without demonstrating actual prejudice. The Respondents assert that the petition is frivolous, legally untenable, and intended to delay proceedings.

7] The Both parties made oral submissions and the Petitioner had tendered further submissions. I now consider the merits of this case.

8] The Petitioner, a Commander in the Sri Lanka Navy, challenges the legality of ongoing court-martial proceedings stemming from charges first heard in December 2020. His legal representation was initially denied, prompting a writ application that resulted in a Court of Appeal bearing case No CA/WRIT?229/2021 ruling on 24th February 2023 affirming his right to counsel and directing the continuation of the court-martial under Section 69 of the Navy Act. When proceedings resumed in June 2023 with a new panel, the prosecution unsuccessfully attempted to amend the charges. Only three of the 28 witnesses have been examined, and in the interim, the judge-advocate was replaced without dissolving the court-martial—contrary to Section 42(3) of the Navy Act, which mandates dissolution in such cases. That was the legal position of the Petitioner.

9] The Learned President's Counsel for the Petitioner argued that Section 42(3) contains imperative language ("shall be dissolved") requiring the court-martial to be dissolved if the judge-advocate cannot continue, as in this case Commander Goonasekere was replaced by Commander Kularatne. Counsel emphasized that this action was ultra vires and violated the statute.

10] The Petitioner further argues that despite the Attorney General advising against reappointing Commander Goonasekere without dissolution the existing Court Martial, the Respondents proceeded to continue with new Judge Advocate to avoid the three-year retrial prescription time as mentioned in Section 26.

11] The learned Counsel for the Respondents basically relied upon section 48 of the Judicature Act to justify continuation; however, Learned President's Counsel for the Petitioner argued that general provisions cannot override the specific provisions. He said that the Navy Act is a special statute, it overrides the provisions of the section 48 of the Judicature Act.

12] The central question involves in this case is the application of section 48 of the Judicature Act in lieu of section 42(3) of the Navy Act, that is Can a judge Advocate be appointed when he ceased to be Judge Advocate, in this matter assuming another duty which conflict s role of Judge Advocate.

13] The section 42(3) says;

*“42(3) **Where the Judge-Advocate** of a court martial dies or **is unable to attend the court martial** owing to illness or **any other cause**, the court martial shall adjourn and the president shall report the circumstances to the authority by whom the court martial was ordered to be held; and in the case of the death of the Judge-Advocate, or **where the authority** by whom the court martial was ordered to be held **is of the opinion that it is inexpedient to delay the trial until the Judge-Advocate who is unable to attend the court martial is able to do so, the court martial shall be dissolved.**”* [Emphasis is added]

14] The section 48 of the Judicature Act is reproduced below for clarity. It says;

*“In the case of death, sickness, resignation, removal from office, absence from Sri Lanka, or other disability of **any Judge** before whom any action, prosecution, proceeding or matter, whether on any inquiry preliminary to committal for trial or otherwise, has been instituted or is pending, such action, prosecution, proceeding or matter may be continued **before the successor of such Judge who shall have power to act on the evidence already recorded by his predecessor, or partly recorded by his predecessor and partly recorded by him or, if he thinks fit, to re-summon the witness and commence the proceedings afresh :***

Provided that where any criminal prosecution, proceeding or matter (except on an inquiry preliminary to committal for trial) is continued before the

successor of any such judge, the accused may demand that the witnesses be resummoned and reheard.” [Emphasis is added]

15] It should be noted that the role of Judge Advocate has been considered as a Judge of Assize. It was held in ***Jayanetti v Martinus*** 71 NLR 49, His Lordship H. N. G. Fernando, C.J. considered the legality of Court Martial proceedings conducted under the Navy Act, No. 34 of 1950 and considered the role of Judge Advocate as Quasi-judicial function follows;

*“Section 39 of the Navy Act prescribes the powers and duties of the Judge-Advocate in court martial proceedings. They are inter alia, to give advice on questions of law or procedure during the proceedings of a court martial, to give advice on any matter before the court, to ensure that the accused does not suffer any disadvantage at his trial, and at the conclusion of the case to sum up the evidence and advise the court upon the law relating to the case. The reason why such powers and duties are vested and imposed on the Judge Advocate is almost obvious. A court martial, although it has the power to try and punish offences, which if committed by civilians would be tried by the ordinary courts, is not ordinarily composed of officers with legal knowledge or judicial experience. In fact, the court in the present case was composed of two supply officers and one surgeon officer. It is because of this lack of legal or judicial training and experience that the function of advising courts martial is committed by law to the Judge Advocate. **Indeed, his functions are comparable to those of a Judge of Assize in cases tried by Jury. Although it is the function of the Jury to decide all questions of fact, the law requires that before the Jury deliberates on the facts, the Judge must sum up to them the evidence.** Section 39 (d) imposes a similar requirement in the case of a trial by court martial”*⁹*[Emphasis is added]*

16] As noted above, the role of the Judge-Advocate is not a full-fledged judge/judicial officer however, he has a quasi-judicial function. It should be noted for applicability of section 48 of the Judicature Act, refers to “any judge”, however, my considered view is that function of quasi-judicial cannot be taken into this section. This section refers a full-fledged judge, a Judge-Advocate is merely an instructor to members of Court-Martial, he does not adjudicate the case. But is misdirection can be fatal irregularity which toppled the decision as observed above in ***Jayanetti v Martinus*** (*supra*). Thus, the contention of the Respondents on the *ejusdem generis* rule to justify substitution of the judge-advocate is not tenable by law.

17] Moreover, the *ejusdem generis* rule is merely rule of construction, not a rule of law. Thus, it has no binding effect on courts. This was correctly observed by Lord Wright in ***National Association of Local Government Officers v. Bolton Corp.*** (1943) AC 166, “the *ejusdem generis* rule is often useful or convenient, but

it is merely a rule of construction, not a rule of law". Further, Farwell L.J., has enunciated in **Tillmanns and Co. v. SS. Knutsford** 1908 2 KB 385 at pages 402 to 403 that "there is no room for the application of the *ejusdem generis* doctrine unless there is a genus or class or category – perhaps category is the better word....". Though, in this matter, the cause related to continuation of proceedings before new judge Advocate, the provision of section 42(3) is clear and unambiguous.

18] I now consider the application of the legal maxim *generalia specialibus non derogant*. Justice **Griffith said in R v Greenwood**, [1992] 7 O.R. (3d) 1, "The maxim *generalia specialibus non derogant* means that, for the purposes of interpretation of two statutes in apparent conflict, the provisions of a general statute must yield to those of a special one. "In the case in hand, the section 42(3) of the Navay Act and no direct impact or conflict on section 48 of the Judication Act. However, the Respondents try to expand the scope of appointing a new adjudge-Advocate without dissolution of the existing court martial.

19] In **Lalonde v Sun Life**, [1992] 3 SCR 261, Justice Gonthier had expressed in his opinion with regard to above legal maxim as: "The principle is, therefore, that where there are provisions in a special Act and in a general Act on the same subject which are inconsistent, if the special Act gives a complete rule on the subject, the expression of the rule acts as an exception to the subject-matter of the rule from the general Act." In the instant case, the appointing authority had appointed a Judge-Advocate afresh when the incumbent Judge-Advocate has accepted a post in another institution. Thus, the both statutes have no direct impact or inconsistency.

20] However, our superior courts have held that where a given provision appears to fall within the scope of more than one provision of a statute, Courts have consistently held that specific provision must be operative while the general provision must be taken to affect only of other parts of the Statute to which it may properly apply [Campbell & Co. v. Wijesekere 21 N.L.R. 431; Ceylon Insurance Company Ltd., v. Diesel and Motor Engineering Company Ltd. (supra); Brown & Co., Ltd v. G. S. Fernando [1986] 2 S.L.R. 177].

21] In **HENDRICK APPUHAMY vs. JOHN APPUHAMY 69 NLR 29, His Lordship SANSONI**, C.J. considered the provisions of the Paddy Lands Act as a special Act and held that there is sole machinery which was introduced by the said Act and a landlord to evict his tenant cultivator by the Act should follow the special machinery. The court held the Act takes away the jurisdiction of the Courts. Thus, the court held that the action was not maintainable and the Plaintiff should have sought his remedy under the Paddy Lands Act and should not have filed action in the District Court. Thus, it is apparent that the Navy Act is a special Act and its provisions should prevail over any other Act.

22] On careful perusal, the impugned section 42(3) is clear and unambiguous. In **Auriya Vinothini Yogaraja nee Poopalarathnam vs Riyal Mohamed Riswan**, SC/APPEAL/33/2020, Decided: 02.12.2024, His Lordship Samayawardhena, J. held the following the statute is clear;

“When the wording of a statute is clear, there is no need for interpretation; the words speak for themselves. The Judge cannot introduce new words or disregard existing words to give a different interpretation in a manner the Judge thinks and serve the ends of justice. The words, phrases, and sentences must be construed according to their ordinary, natural, and grammatical meanings.

This principle, known as the primary or literal rule, constitutes the foundational tenet of statutory interpretation. (Maxwell on The Interpretation of Statutes, 12th Edition (1969), pages 28- 32; N.S. Bindra Interpretation of Statutes, 13th edition (2023), pages 328- 336) In general terms, the Judge may resort to other canons of interpretation, such as the golden rule, the mischief rule, and harmonious construction, if he is fully convinced that the literal meaning is inconsistent with the clear intention of the legislature or leads to absurdity or repugnancy. In Miller v. Salomons (1853) 7 Ex. 475, Pollock C.B. stated at 560: If the meaning of the language used by the legislature be plain and clear, we have nothing to do but to obey it—to administer it as we find it, and I think, to take a different course is to abandon the office of Judge, and to assume the province of legislation.”
[Emphasis is added]

23] Wording of section 42(3) is clear. It enacted *inter alia*, **Where the Judge-Advocate is unable to attend the court martial** owing to illness or **any other cause, where the authority is of the opinion that it is inexpedient to delay the trial until the Judge-Advocate who is unable to attend the court martial is able to do so, the court martial shall be dissolved.** Thus, I hold that there is no room for continuation of proceedings on the substitution of Judge Advocate under this section. Thus, the appointing authority (the Respondents) are clearly *ultra vires* in appointing a new Judge Advocate without dissolution of the Court Martial. Thus, the application of the Petitioner must be allowed.

24] I now consider the issuing of a writ of mandamus directing dissolution of the Court Martial. The section 28 of the Navy Act says as follows;

*“28. No person subject to naval law, unless he is an offender who has avoided apprehension, or fled from justice, shall be tried or punished by a court-martial or by a naval officer exercising judicial powers under this Act for any offence committed by that person unless the trial takes **place***

within a period of three years from the commission' of the offence,
or, where that person has been absent from Ceylon during such period,
within one year after his return to Ceylon.”[Emphasis is added]

25] The charges of the Court Martial were in relation to period of 01/05/2018 to 29/02/2020. In the above circumstances, this court issues a writ of certiorari to quash the summing up of the Judge Advocate marked as P-7 (A), quashing the order made by 2nd to 4th Respondents dated 02/04/2024, tendered as P-7(B) and a writ of mandamus on 1A Respondent to dissolve the existing Court Martial in terms of section 42(3) of the Navy Act No.34 of 1950. Parties will bear their own costs.

Dr. Sumudu Premachandra

Judge of the Court of Appeal

I agree.

R. Gurusinghe

Judge of the Court of Appeal