

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

**Court of Appeal Case No: 166/2020**

Anura Kumara Dissanayake,  
No.464/20,  
Pannipitiya Road, Pelawatta,  
Battaramulla.

**Petitioner**

**VS.**

1. Hon. Upaly Abeyrathne,  
Chairman,
2. Hon. Daya Chandrasiri Jayathilaka,  
Member
3. Chandra Fernando,  
Member,
4. The Secretary,  
all of,

Presidential Commission of Inquiry to inquire and obtaining information pertaining to the alleged incidents of Political Victimization of Public Officers, Employees of State Corporations, Members of Armed Forces and the Police Service, Room No. 210, Block No. 02, 2<sup>nd</sup> Floor, Bandaranayake International Conference Hall, Bauddhaloka Mawatha, Colombo 07.

5. Mr. Janaka Bandara,  
Senior State Counsel,  
Attorney General's Department,

Colombo 12.

6. Mr.Dappula De Livera, PC,  
Hon Attorney General,  
Attorney General's Department,  
Colombo 12.
7. Nissanka Senadhipathi,  
Avant Garde Maritime Services (Pvt)  
Ltd, No.613, Bangalawa Junction,  
Kotte Road, Kotte
8. Avant Garde Maritime Services  
(Pvt) Ltd,  
No.613, Bangalawa Junction,  
Kotte Road, Kotte

**Respondents**

**Before:** **N. Bandula Karunarathna J. P/CA**  
**&**  
**D. N. Samarakoon, J.**  
**&**  
**M. T. Mohammed Laffar, J**

**Counsel:** Saliya Pieris, P.C. with Upul Kumarapperuma, P.C., Thanuka Nandasiri AAL, Sarinda Jayawardena AAL, Nisal Hennadige AAL, Vimukthi Karunarathne instructed by Sunil Watagala, AAL for the Petitioner.

Parinda Ranasinghe P.C., ASG, Nerin Pulle P.C., ASG, Chaya Sri Nammuni DSG, Medhaka Fernando SC for the 5<sup>th</sup> and 6<sup>th</sup> Respondents.

**Written Submissions:** By the Petitioner – Not filed.

By the Respondent – Not filed.

**Argued on :** 11.10.2023

**Decided on :** 25.03.2024.

**N. Bandula Karunarathna J. P/CA**

This is an application for a Writ of Prohibition preventing the 1<sup>st</sup> – 4<sup>th</sup> Respondents inquiring into the complaint made by the 7<sup>th</sup> Respondent dated 31.01.2020 and to issue a Writ of Certiorari to quash the findings, decisions and recommendations of the 1<sup>st</sup> to 3<sup>rd</sup> respondents in the report, in respect of the petitioner. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents are the Chairman and members of a Presidential Commission of Inquiry appointed by H.E. the President under Section 2 of the Commissions of Inquiry Act no. 17 of 1948.

The Petitioner has not requested a relief preventing the Respondents from taking any steps to implement or give effect to the recommendations of the final report in any way in so far as they relate to the Petitioner.

The Petitioner seeks the following reliefs in his Petition dated 13.07.2020.

- (i) Issue notice on the Respondents;
- (ii) Grant and Issue a Stay Order staying inquiry which emanates from the complaint preferred by the 7<sup>th</sup> Respondent dated 31.01.2020 marked as X until the final determination of this case;
- (iii) Grant and issue an order in the nature of a writ of Certiorari quashing the decision taken by one or more of the 1<sup>st</sup> to 4<sup>th</sup> Respondents to accept/entertain and/or investigate the complaint made by the 7<sup>th</sup> Respondent to one or more or all of the 1<sup>st</sup> to 4<sup>th</sup> Respondents dated 31.01.2010 marked as X;
- (iv) Grant and issue an order in the nature of a writ of Certiorari quashing the decision taken by the 1<sup>st</sup> to 4<sup>th</sup> Respondents to name the Petitioner a Respondent and/or summon him under section 16 of the Commissions of Inquiry Act No. 17 of 1948 (as amended) in the inquiry emanating from the complaint bearing No. PCI/PV/01/Com./50/2020 made by the 7<sup>th</sup> Respondent dated 31/01/2020 marked as X;
- (v) Grant and issue an order in the nature of a writ of Certiorari quashing the decision taken by the 1<sup>st</sup> to 4<sup>th</sup> Respondents to issue summons on the Petitioner by the Summons dated 16.06.2020 marked as P-3;
- (vi) Grant and issue an order in the nature of a writ of Certiorari quashing the decision taken by the 1<sup>st</sup> to 4<sup>th</sup> Respondents to and the decision taken by the 1<sup>st</sup> to 3<sup>rd</sup> Respondent on the 23.06.2020 (P-4) and/or 30.06. 2020 (P5) to overrule the preliminary objections taken by the Petitioner and the other Respondents to that inquiry regarding the jurisdiction of the Commission to

inquire in to the complaint bearing No. PCI/PV/01/Com./50/2020 made by the 7<sup>th</sup> Respondent dated 31.01.2020 marked as X;

- (vii) Grant and issue an order in the nature of a writ of Prohibition prohibiting the 1<sup>st</sup> to 4<sup>th</sup> Respondents from exercising any act and/or omission that amounts to a violation of the purpose and the powers under and in terms of Gazette Extraordinary No. 2157/44 dated 09<sup>th</sup> of January 2020 and Notification published in Gazette Extraordinary No. 2159/16 dated 22<sup>nd</sup> of January 2020 marked as P-1 and P-2;
- (viii) Grant and issue an order in the nature of Writ of Prohibition preventing the 1<sup>st</sup> to 4<sup>th</sup> Respondents inquiring in to the complaint made by the 7<sup>th</sup> Respondent marked as X dated 31.01.2020,
- (ix) Grant and issue an order in the nature of Writ of prohibition preventing the 1<sup>st</sup> to 4<sup>th</sup> Respondents from naming the Petitioner as a Respondent and/or person coming under section 16 of the Commissions of Inquiry Act No.17 of 1948 (as amended) in the inquiry which emanates from the complaint preferred by the 7<sup>th</sup> Respondent dated 31.01.2020 marked as X;
- (x) Direct the 6<sup>th</sup> Respondent to submit to this Court, the letter dated 22.06.2020 addressed to the Presidential Commission of Inquiry to inquire and obtaining information pertaining to the alleged incidents of Political Victimization of Public Officers, Employees of State Corporations, Members of Armed Forces and the Police Service;
- (xi) award the Petitioner compensation as determined by this Court;
- (xii) award the Petitioner costs; and
- (xiii) grant the Petitioner such other and further reliefs as to this Court shall seem meet.

The Petitioner states that the Petitioner is a Politician by profession. He is the Leader of the Janatha Vimukthi Peramuna (People's Liberation Front) commonly known as the JVP. He states that having obtained his preliminary education in Thambuththegama Junior School; the Petitioner received his Higher education from the Thambuththegama Madya Maha Vidyalaya. The Petitioner states that he was graduated from the University of Kelaniya in Science stream and holds a degree in Physical Science (BSc. Phy). He entered politics as a student when Indo - Sri Lanka Peace Accord was signed in 1987.

The Petitioner states that he participated in the activities of the Socialist Students Union and was appointed as the National Organizer of the Socialist Students Union in 1997, while he was reading for his Degree at the University of Kelaniya. Thereafter, the Petitioner was elected to the Central Committee of the JVP in 1997 and was appointed to the Polit Bureau of the JVP in 1998. The Petitioner states that subsequently, in 1998, the Petitioner was nominated as the chief ministerial candidate for the Central Provincial Council.

The Petitioner entered the Parliament in 2000 and was elected to the Parliament in the years 2001, 2004, 2010 and 2015. the Petitioner further states that during his political career, he had contributed in creating the 'Probationary Government'. He was elected to the Parliament in the year 2004 and he held the Ministerial Portfolio of Agriculture, Lands, Irrigation and Livestock of in the said People's Alliance Government. He further states that he was elected for the post of Chief Opposition Whip of the Eighth Parliament of Sri Lanka on the 3<sup>rd</sup> of September 2015.

The 1<sup>st</sup> Respondent is the Chairman of the Commission of Inquiry, which was appointed by his Excellency the President of Sri Lanka, under and in terms of his proclamation as reflected in Gazette Extraordinary Bearing No. 2157/44 dated 09.01.2020, by virtue of the powers vested in him by the Commissions of Inquiry Act No. 17 of 1948 (as amended) for the purpose of inquiring into and obtaining information pertaining to the alleged incidents of Political Victimization of Public Officers, Employees of State Corporations, Members of Armed Forces and the Police Service, between the period of 08<sup>th</sup> of January 2015 to 16<sup>th</sup> November 2019.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are the members of the aforesaid Commission of Inquiry. The 4<sup>th</sup> Respondent is the Secretary to the said Commission of Inquiry.

The 5<sup>th</sup> Respondent is a Senior State Counsel attached to the Attorney Generals Department who is conducting the Prosecution of the High Court Trial-at-Bar which is instituted against one Nissanka Senadhipathi whose complaint that has been made the subject matter of the impugned inquiry, morefully, described in the Petition.

The 6<sup>th</sup> Respondent is the Hon. Attorney General. The Petitioner states that the Hon. Attorney General is named a party to this application as he has already taken measures to inform the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, that the Commission is in lack of Jurisdiction to inquire in to a matter of a complaint made by a private individual, in such circumstances where the Hon. Attorney General has served an indictment to the High Court against the Complainant Nissanka Senadhipathi (7<sup>th</sup> Respondent).

The 7<sup>th</sup> Respondent is Nissanka Senadhipathi, Chairman of the Avant Garde Maritime Services (Pvt) Ltd, who is also the Complainant of the Complaint bearing No. PCI/PV/01/Com./50/2020 to the Presidential Commission of Inquiry to inquire and obtaining information pertaining to

the alleged incidents of Political Victimization of Public Officers, Employees of State Corporations, Members of Armed Forces and the Police Service.

The 8<sup>th</sup> Respondent is the Avant Garde Maritime Services (Pvt) Ltd, a subsidiary company of Avant Garde Security Services (Pvt) Ltd, incorporated on the 24<sup>th</sup> June 2011 under the Companies Act No. 7 of 2007.

The Petitioner states that the Petitioner prefers this application before this Court challenging and impugning the inquiry conducted by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents based on the Complaint bearing No: PCI/PV/01/Com./50/2020, primarily, on the basis that the 1<sup>st</sup> - 3<sup>rd</sup> Respondents lack jurisdiction to conduct such inquiry, issue summons under and in terms of the mandate issued to them by the Gazette Extraordinary bearing No. 2157/44 dated 09<sup>th</sup> January 2020, the Gazette Extraordinary bearing No. 2159/16 dated 22<sup>nd</sup> January 2020 and the Commissions of Inquiry Act (as amended) and also on the basis that the Complainant does not have Locus Standi.

The Petitioner states that the Mandate of this Presidential Commission as set out in the Notification published in Gazette Extraordinary No. 2157/44 dated 09<sup>th</sup> of January 2020, inter alia states as follows;

- i. That, it has been reported that public officers, employees of public corporations, and members of the armed forces and police service who held such office prior to the Presidential Elections and/or General elections held respectively in January and August 2015, being persons who had either resigned from or otherwise ceased to hold public office with the change of Government or continued to hold such office after such change, during the period commencing 08<sup>th</sup> January 2015 and ending 16<sup>th</sup> November 2016 were subjected to political victimization;
- ii. That, such process of Political victimization has been instigated through a Special Unit dealing with Anti- Corruption, Commission to investigate Allegations of Bribery or Corruption (CIABOC), Financial Investigations Divisions (FCID) of the Sri Lanka Police, and/or/ Special Investigations Unit (SIU) of the Sri Lanka.

The Petitioner further states that by the Gazette Extraordinary Bearing No. 2159/16 dated 22<sup>nd</sup> January 2020, inter alia states that in addition to the above institutions, even the Criminal Investigation Department (CID), must be included as an agency that has by its process subjected persons referred to in the Gazette Extraordinary No. 2157/44 dated 09<sup>th</sup> of January 2020 to political victimization. Having given such mandate, the scope of inquiry conducted by the Commission is limited and must be within the limitations and the purview of such mandate. The Petitioner accordingly, states that a complaint from a private individual, cannot

be entertained and/or be inquired into by the Respondents as the mandate has been given solely to inquire in to.

The mandate of the Commission as set out in the notification published in Gazette Extraordinary No. 2157/44 dated 09<sup>th</sup> of January 2020, excludes any private individual from filing a complaint before the Commission since such person has no locus standi to appear before the Commission and be heard by the Commission, and thus, any act and or decision made by the commission purporting to accept any complaint made by such persons who does not fit in to the scope of the mandate, may deemed to be an act and/or decision that is ultra vires and without jurisdiction, in a manner outside the scope of its mandate and authority conferred, and the entirety of the proceedings before the said Commission in respect of such inquiry is void ab initio, is a nullity and has no force or avail or consequence in Law.

However, Nissanka Senadhipathi (7<sup>th</sup> Respondent), who is the Chairman of the Avant Garde Maritime Services (Pvt) Ltd. (8<sup>th</sup> Respondent) had made a complaint bearing No. PCI/PV/01 Com./50/2020 dated 31.01.2020 to the Commission stating that he was subjected Political Victimization during the period commencing 08<sup>th</sup> January 2015 and ending 16<sup>th</sup> November 2019.

The Petitioner states that he received summons and notice dated 16/06/2020 regarding Complaint bearing No: PCI/PV/01/Com./50/2020 from the 4<sup>th</sup> Respondent under the order of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents of the Commission informing that the Presidential Commission of Inquiry is to inquire into and obtain information in relation to alleged Political Victimization of Public Officers, Employees of State Corporations, members of Armed Forces and the Police Service who held posts during the period commencing 08<sup>th</sup> January 2015 and ending 16<sup>th</sup> November 2019, and hence stating inter alia as follows;

*"ඇවන්ගාර්ඩ් මෙරිටයිම් සමාගමේ සභාපති නිශ්ශංක සේනාධිපති විසින් දේශපාලන පළිගැනීම් සිදුකරන ලද බවට කළ පැමිණිල්ල කොමිෂන් සභා පනතේ 16 වන වගන්තිය යටතේ වගඋත්තරකරුවෙකු වශයෙන් ඔබ කැඳවීමට කොමිෂන් සභාව මට නියම කර ඇත. සාක්ෂි ලබා දීමේදී ඉදිරිපත් කළයුතු ලිඛිත සාක්ෂි සමකාලීන රෙකෝඩ්වල හෝ පරිසන්න සාක්ෂි ඇත්නම් ඒවාද සමඟ පෙනී සිටීමට ඔබට මෙයින් දැනුම් දෙමි. "*

The Petitioner further states that consequently, the Petitioner presented before the said Commission on the 23.06.2020 and made an application before the Commission primarily stating that the Petitioner objects to the jurisdiction of the Commission to inquire in to the Complaint made by Nissanka Senadhipathi. The Petitioner states that the Petitioner made a further application subject to the objection, that the Petitioner has not received any document in relation to the Inquiry, and that even though the Petitioner was made a

Respondent, he has not been provided with the Complaint that is made the subject matter to the impugned inquiry. The Petitioner states that therefore, the Petitioner made an application to the commission requesting the copy of the complaint made and the proceedings pertaining to the inquiry thus far.

However, even though the Petitioner had requested copies of the above-mentioned documents, such was not provided to the Petitioner by the following date of inquiry which was held on the 26.06.2020. The Petitioner states that the Petitioner therefore appeared before the Commission on the 26.06.2020 and made an application to the effect stating that the Petitioner has not received the documents sought by the Petitioner on the 23.06.2020.

The Hon. Attorney General (6<sup>th</sup> Respondent) by a letter dated 22.06.2020 has informed the Commission that the Summons issued by the Respondent dated 17<sup>th</sup> June 2020 served on Mr. Janaka Bandara (5<sup>th</sup> Respondent), Senior State Counsel are contrary to the process contemplated by the law and, as such is thereby invalid. The Petitioner states that the said letter was also requested by the Petitioner on the 23.06.2020 and also on the 26.06.2020 by the Commission and nevertheless a copy of the said letter was not provided to the Petitioner.

Thereafter, the Petitioner presented himself before the said Commission on the 30.06.2020 together with the Counsels appearing for the Petitioner. The Petitioner states that the Counsel appearing for the Petitioner raised a preliminary objection before the Commission as to the Jurisdiction of the said Commission to conduct the impugned inquiry. The Petitioner states that it was contended by the Counsel appearing for the Petitioner and the other Respondents summoned by the Commission, that the impugned inquiry could not be sustained before the Commission and that in such circumstances, the Commission could not issue summons on the Petitioner and the other Respondents named thereto, and that such action is *Ultra Vires* and illegal. Despite the preliminary objections raised by the Counsels for the Petitioner, and also by the other Respondents summoned by the Commission, the 1<sup>st</sup>-3<sup>rd</sup> Respondents overruled the objection and refused to make any order regarding the same and stated *inter alia* that, the Commission has come to a conclusion regarding jurisdiction at the time of accepting the complaint filed by Mr. Nissanka Senadhipathi, and thus, there is no necessity to make order in such regard and merely and simply continued with the inquiry.

Thereafter, the Counsel appearing for the Petitioner made an application to the Commission that, the Petitioner would appear before the Commission, however, subject to the objection taken as to the jurisdiction of the Commission. The aforesaid Summons and Notice refer to a "complaint of political victimization made by Nissanka Senadhipathi, the Chairman of the Avant Garde Maritime Services (Pvt.) Ltd." (here in after referred to as the Complainant). The Petitioner states that however, neither the complaint nor the allegation against the Petitioner has been served or disclosed at the time summons were served on the Petitioner.



When perusing the complaint made by the said Complainant, Mr. Nissanka Senadhipathi, it was immediately apparent that such complaint has arisen from his involvement as an Accused in Case No. TAB/751/2019 in the High Court of Colombo, Case No. HCB/25/2017 in the High Court of Colombo and Case No. MC 59287/01/16 in the Magistrate's Court of Colombo. To the best of the Petitioner's knowledge, the subject matter of this inquiry was initially considered by the Commission of Inquiry to Investigate and Inquire into Serious Acts of Fraud, Corruption, and Abuse of Power (PRECIFAC). The said Commission was commissioned in March 2015 to probe large scale corruption and fraud involving public funds and instances of abuse of power as it concerned the role of Avant Garde Maritime Services Private Limited (of which the Complainant is the Chairman) in connection with a Floating Armory off the Port of Galle and the possession of large quantities of firearms contrary to law.

The aforesaid Commission (PRECIFAC) had found that the Avant Garde Maritime Services Private Limited including members of the Senior Management of the said entity should be held responsible for Criminal Misappropriation of Public funds and Corruption and that following the recommendation of the Hon. Attorney General, the Criminal Investigation Department (CID) initiated an investigation with regard to MV/Avant Garde, a ship which had entered Sri Lankan waters from the Red Sea. Thereafter, the Hon. Attorney General indicted that the Complainant, Mr. Nissanka Senadhipathi, had committed offences under the Firearms Ordinance and the Explosives Act and based on an application by the Hon. Attorney General considering the gravity of the offences disclosed in the Indictment, a Trial-at-Bar was duly constituted by His Lordship the Chief Justice.

A Bribery case bearing No. HCB/25/2017 in the High Court of Colombo, where the Complainant and the former Chairman of Rakna Lanka Private Limited, Major General Palitha Fernando have been named as accused for offering and accepting a bribe of a sum of Rs.35.5 million and this Prosecution is at the tail end. The Petitioner states that the prosecuting officer in the said case is a Senior State Counsel Mr. Janaka Bandara and that he is also named as a Respondent in the matter taken up for inquiry at the said Commission Chaired by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents who constitute this Commission, cannot take steps which would directly or indirectly call into question any of the ongoing judicial proceedings, including those connected with the Complainant in the aforesaid Complaint No. PCI/PV/01/Com./50/2020 as the matter inquired into by this commission is under judicial consideration and is thus *sub judice*. It is the role of the courts to deal with legal issues that are before it. The courts' role should not be usurped by the Respondents making statements/ findings or recommendations concerning how these issues should be dealt with.

The notification published in Gazette Extraordinary No. 2157/44 dated 09<sup>th</sup> of January 2020 which sets out the parameters of the Mandate of the Respondents, specifically states in the eighth recital thereof that "the scope of the inquiry into the said matter under this warrant would not in any way impose a fetter upon the relevant authorities exercising their statutory

and legal responsibilities" and that "the relevant authorities are empowered in terms of the applicable written laws to consider and, where, possible, pursue available action, in terms of the applicable written laws, notwithstanding the inquiry conducted in terms of this warrant". The Petitioner states that this Commission of Inquiry is not a judicial tribunal as it does not fall within any of the institutions contemplated under Article 4 (c) read with Article 105 of the Constitution. the Petitioner states that it is a fact-finding body functioning under the authority of the Executive.

The Petitioner therefore states that, any attempt by the Respondents to directly or indirectly inquire into or investigate matters which are pending before the relevant judicial fora would tantamount to an interference with the judiciary and would be a gross encroachment and violation of the principle of the separation of powers. In such situation, the aforesaid summons sought to be issued by the Respondents to the Petitioner to appear reflects a serious destruction into the judicial powers of the people vested in the judiciary in terms of the provisions of Article 111 C (1) and 111 C (2) of the Constitution. The Petitioner further states that, the mandate of the Commission of Inquiry being a fact-finding body cannot be used to impede the functions of the judiciary, neither directly nor indirectly. The Petitioner states that the conduct of the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents in the aforesaid proceedings with gross ignorance of procedure and Rule of Law have been totally appalling and unintelligible. In order to further facilitate and assist this Court in the adjudication of this matter Senior State Counsel Janaka Bandara is also named as a Respondent with no relief claimed against him.

The Petitioner states that the Petitioner has preferred this Application, invoking the Writ Jurisdiction of this Court on the grounds that;

- \* The act and/or decision of the 1<sup>st</sup> to 4<sup>th</sup> Respondents or any one or more of them, to accept the complaint made by Nissanka Senadhipathi and the act and/or decision of the 1<sup>st</sup> to 4<sup>th</sup> Respondents or any one or more of them commence a purported inquiry, naming the Petitioner as "Respondent" and the act and/or decision of the 1<sup>st</sup> to 4<sup>th</sup> Respondents or any one or more of them, to issue summons on the Petitioner,
- \* The decisions and/or acts of the 1<sup>st</sup> to 4<sup>th</sup> Respondents or any one or more of them are contrary to the mandate conferred on Respondents in terms of the Commissions of Inquiry Act (Chapter 393), No. 17 of 1948 (as amended), and/or by Gazette Extraordinary No. 2157/44 dated 09th of January 2020 and Notification published in Gazette Extraordinary No. 2159/16 dated 22<sup>nd</sup> of January 2020 to carry out the purported inquiry against the Petitioner,

- \* The decisions and/or acts of the 1<sup>st</sup> to 4<sup>th</sup> Respondents or any one or more of them to issue summons on the Petitioner is contrary to the mandate conferred on Respondents in terms of the Commissions of Inquiry Act (Chapter 393), No. 17 of 1948 (as amended), and/ or by Gazette Extraordinary No. 2157/44 dated 09th of January 2020 and Notification published in Gazette Extraordinary No. 2159/16 dated 22<sup>nd</sup> of January 2020 to carry out the purported inquiry against the Petitioner, are grossly indefensible, unreasonable, arbitrary, mala fide and unfair, and are thus, deemed to be *Ultra Vires*, illegal and bad in law.

The Petitioner states that in the totality of the aforesaid state of affairs, the acceptance of the complaint made by Nissanka Senadhipathi and the proceeding to inquire into the said complaint and issuing summons on the Petitioner constitutes an administrative and/or executive action within the meaning of the Constitution and that such action and/or decisions taken by the 1<sup>st</sup> to 4<sup>th</sup> Respondents or any one or more of them is without any justifiable reason, arbitrary, unreasonable, unfair, unjust, capricious and irrational; is based on irrelevant considerations and has been carried out for collateral purposes, motivated by extraneous considerations; is without any legal basis whatsoever is against the legitimate expectations of the Petitioner; is tainted with *mala fides*; is *ultra vires*; is illegal and contrary to law; has been carried out contrary to the principles of natural justice.

The Petitioner state that in the aforesaid state of affairs and/or decisions of the 1<sup>st</sup> to 4<sup>th</sup> Respondents or any one or more of them; to accept the complaint made by Nissanka Senadhipathi, to commence an inquiry, to name the Petitioner as a "Respondent" and to issue summons on the Petitioner are grossly indefensible, unreasonable, arbitrary, *mala fide* and unfair, and are thus, deemed to be *Ultra Vires*, Illegal and bad in law and made disregarding the mandate conferred on the 1<sup>st</sup> to 4<sup>th</sup> Respondents by the Gazette Extraordinary No. 2157/44 dated 09<sup>th</sup> of January 2020 and Notification published in Gazette Extraordinary No. 2159/16 dated 22<sup>nd</sup> of January 2020, has consequently, qualified the Petitioners in the aforesaid circumstances, to seek a mandates in the nature of a writ of Certiorari and a writ of Prohibition.

The Petitioner further states that in the totality of the aforesaid circumstances, the Petitioner seek to staying the inquiry which emanates from the complaint preferred by the 7<sup>th</sup> Respondent dated 31.01.2020 marked as X until the final determination of this case. The Petitioner does not seek any relief against the 5<sup>th</sup> and 6<sup>th</sup> Respondents.

This case was taken up together with the other similar matters and argued together by all counsel considering the unreasonableness of the final report of the Commission. Although the petitioner in this case has not prayed in his Petition dated 13.07.2020, to quash the final report of the Commission, I wish to consider granting the relief to the petitioner in this case under Prayer (xiii) of the Petition.

The contention of the learned President's Counsel who appeared on behalf of the Petitioner was that there has been no compliance with the rules of natural justice, in so far this Petitioner is concerned, the findings are ex-facie *ultra vires* and have no basis. It was further argued that the findings are unreasonable in the Wednesbury sense. In the circumstances, the learned Counsel for the Petitioner says that the findings and the report is ex-facie, *ultra vires*, void and has no force or effect in law. It is important to note that, an examination of the position of the 5A Respondent, supports the position of the Petitioner, and fortifies the view that the findings and the report ought to be quashed.

This Court heard the Petitioner in support, and was inclined to issue notices on or about 9<sup>th</sup> May 2022. Notices were issued and served on the Respondents, who chose not to file any objections, having received the complaint of the Petitioner. However, no objections had been filed thus far by any of the Respondents for over a year, and on this ground alone it must deem that the Respondents have no objection to the grant of the reliefs. It was argued that on this ground alone, the reliefs sought, ought to be granted. In any event, the learned President's counsel submits that the findings and the Report is contrary to all principles of natural justice known to law.

In these circumstances, the Petitioner argued that he was led to believe and had a legitimate expectation that no findings and recommendations would be made against the Petitioner and there would be no material collected against the Petitioner to the detriment of the Petitioner. The petitioner finds that the report contains, damaging findings against the Petitioner, are grave and very serious. In these circumstances, he argued that there is a grave violation of the rules of natural justice, and on this ground alone, the report and the findings should be quashed.

In my considered view that the former President Gotabhaya Rajapaksha had appointed a Special Presidential Commission by Gazette Notification 2212/53 dated 29.01.2021 appointing a Special Commission of Inquiry to look into whether the observations and recommendations contained in the final report of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents were legally binding and had merit. The words used in the mandate at paragraph 1, *inter alia*, are as follows;

"... to further investigate and report whether the above malpractices have done and what extent are the respondents so responsible, and to recommend whether a person should be subjected to a community disability according to the provisions of Article 81 of the Constitution and Section 9 of the Special Presidential Commission of Inquiry Act (Special Provisions) Act No 4 of 1978."

Therefore, it is clear that the recommendations of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents could not be given effect to until the Special Presidential Commission appointed by the President had gone

into the contents of the said report and made their own recommendations as to the validity and legality of giving effect to the Report of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and after further investigation making their independent recommendation of the course of action that needs to be adopted in this regard.

Whether or not the rights of the Petitioner may or may not be affected would therefore, depend on the recommendations of the Special Presidential Commission. The mandate of the said Special Presidential Commission of Inquiry was further amended by Gazette Number 2221/54 dated 01<sup>st</sup> April 2021. By the said Gazette, His Excellency the President has stated inter alia as follows;

"And whereas, now, I am of the considered view that in consideration of the specific, findings, decisions and recommendations made against and/or against the specific persons identified in the said report submitted to me by the Presidential Commission of inquiry constituted by me, by the warrant issued on 09<sup>th</sup> January 2020, ....."

"that such specific, findings, decisions and recommendations contained in the said Report in respect of all such identified persons should inter alia in the public interest, and for purposes of greater scrutiny be further inquired into by you, and to report to me on the suitability and justification if any for the implementation and enforcement of the said findings, decisions and recommendations contained in the said Report of the Presidential Commission of Inquiry as well as for the adoption of any action in respect thereof."

It is clear that His Excellency the President had, at the time of the promulgation of the aforesaid Gazette not yet decided whether there was any justification for the implementation and enforcement of the recommendations of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents. In the said Gazette Number 2221/54 dated 01 April 2021 the Terms of Reference of the Special Presidential Commission was expanded by paragraph 02 of the said Gazette and the Special Presidential Commission was mandated to also inquire into and report whether all or any of the findings, decisions and recommendations contained in the aforesaid Report of the Presidential Commission of Inquiry, made in respect of all the persons identified therein and whether any or all of the same should be implemented or cause to be implemented....."

The expansion of the mandate of the Special Presidential Commission made it clear as a matter of law that in the view of the appointing authority H.E the President, the recommendations of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents were unfit for implementation pending a decision of the Special Presidential Commission as to whether any of such recommendations should be implemented or not.

The Special Presidential Commission could not finalize this report and was given an extension of time until 28.04.2022 by Gazette Notification 2251/37 dated 28.10.2021.

However, the Special Presidential Commission could not carry out their mandate and finalize any report and did not submit any recommendation before the expiry of the mandate of the commission on 28.04.2021. The mandate of this Special Presidential Commission was not extended by His Excellency the President. When this Special Presidential Commission appointed for that very purpose became *functus* without submitting any recommendations, what remains is the last Presidential directive not to implement the Report of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents without fully looking into and reviewing the recommendations to ascertain whether such recommendations were justified.

The fact that the term of the Special Commission expired without extension and without resulting in a final report does not in any way, take away the fact that the first impugned Report was viewed by His Excellency the President and the Cabinet of Ministers as lacking and requiring further investigation and inquiry. The appointment of another Special Presidential Commission of Inquiry by His Excellency the President, the recommendation of the Commission comprising 1<sup>st</sup> to 3<sup>rd</sup> Respondents has become redundant.

By the said appointment of the Special Presidential Commission, the recommendations of 1<sup>st</sup> to 3<sup>rd</sup> Respondents have become inoperative and it is evident that His Excellency the President does not wish to proceed with the said recommendations. Even though the position of the Hon. Attorney General was that, the recommendations of the Special Presidential Commission has now become redundant, the question that has to be considered is whether, the recommendations of the Commission of Inquiry are legally binding.

In the case of Silva and Others v. Sadique and Other; (1978) 1 SLR 166, it was examined whether the commissions formed under Commission of Inquiry Act 1948 able to review by of Writ of Certiorari under Article 140 of the 1978 Constitution and held that recommendation made by a Commission of Inquiry are not subject to review as the decisions are not bidding in nature and lacks legal authority.

In the case of Kehar Singh v Delhi Administration, AIR [1988] SC 1883: [1988] 3 SCC 609, it was held that,

"The report of a Commission is a recommendation of the Commission for the consideration of the Government. It is the opinion of the Commission based on the statements of witnesses and other material. It has no evidentiary value in the trial of a criminal case... "

In the case of Kabugo v The Commission of Inquiry (effectiveness of law, policies and processes of land acquisition, land administration, land management and land registration in Uganda) & Anor, (Miscellaneous Cause 108 of 2019) [2020] UGHCCD 62 [23 April 2020] it was held that;

"Basically, an inquiry under the Commissions of Inquiry Act is usually mounted by the government for the information of its own mind.....",

"The Commissions of Inquiry Act makes no provision for giving effect to the commission's findings. The commission is merely a fact-finding body having no power to pronounce a binding or definitive judgment or orders. It collects facts through the evidence laid before it, and after considering the same, it submits its report which the appointing authority may or may not accept....."

"The Commission is required to collect fact fairly to all concerned and in the best manner possible and advise the government with its findings. It will be ultimately for the appointing authority (President or government) to accept the commission's findings and take appropriate measures as advised or even otherwise....."

In the abovementioned case of, Silva and Others v. Sadique and Other, [1978] 1 SLR 166 the court held that;

"It appears to be clear that certiorari will also lie where there is some decision, as opposed to a recommendation, which is a prescribed step in a statutory process and leads to an ultimate decision affecting rights even though that decision itself does not immediately affect rights. From the citations which I have set out, it would appear that a Writ of Certiorari would lie in respect of an order or decision where such order or decision is binding on a person and it either imposes an obligation or involves civil consequences to him or in some way alters his legal position to his disadvantage or where such order or decision is a step in a statutory process which would have such effect."

Further in the case of Silva and Others vs Director of Health Services and Others [2010] 1 SLR 285 it has been held that;

"The recommendation of the Human Rights Commission contained in PI la and P12 does not take effect *proprio vigore*. There is no provision in the said Act to enforce the recommendation of the said Commission. If the Commission's recommendations are not complied with, the Commission can only report to the President and in turn it can be placed in Parliament. In view of this the recommendation of the Human Rights Commission cannot be quashed by a writ of Certiorari."

In the case of S.S.A.U.S.A Udayar and another vs M.S.M.K. Marikkar and Others C. A. (Writ) 106/2012, (C.A Minutes; 22.06.2020) it was held that;

"There is a long line of judicial authority which unequivocally states that a writ of certiorari will issue only where the decision-maker has determined questions affecting the rights of the subject and will not issue against recommendations that do not have any force *proprio vigore*. "

[De Mel v. De Silva (51 N.L.R. 105), Dias v. Abeywardena (68 N.L.R. 409), Fernando v. Jayaratne (78 N.L.R. 123)11, G.P.A. Silva and Others v. Sadique and Others [(1978-79) I Sri.L.R. 166].....

In the case of, Ratnasiri and others v. Ellawala and others, (2004) SLR 180 12, it was held that;

"This court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right. Court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that "A writ... will not issue where it would be vexatious or futile. "

See, P.S. Bus Co. Ltd. v Members and Secretary of the Ceylon Transport Board

In Siddeek v Jacolyn Seneviratne and Others 1984 (1) SLR 83 Soza, J. delivering the judgment of the Supreme Court observed that;

"The Court will have regard to the special circumstances of the case before issuing a writ of certiorari. The writ of certiorari clearly will not issue where the end result will be futility, frustration, injustice and illegality."

The learned Additional Solicitor General who appeared on behalf of the Hon. Attorney General submitted that the recommendations sought to be quashed by the Petitioner has not been acted upon by His Excellency the President and there are no legally binding and operative recommendations to be quashed. Therefore, the issuance of Writ of Certiorari as prayed for by the Petitioner in this application is futile. The learned Additional Solicitor General suggests to terminate the proceedings with liberty for the Petitioner to re agitate this matter if the need arises.

It is my view that the impugned recommendations and decisions of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents are not final and conclusive. Therefore, this matter is now futile and academic in view of the fact that the decisions of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents are not final and conclusive.

When this matter was taken up on 14.03.2022, it was submitted on behalf of the Hon. Attorney General that the Secretary to His Excellency the President Gotabhaya Rajapaksha, has instructed the Hon. Attorney General that he does not intends to refer the report of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to Bribery Commission or Public Service Commission but to await the full recommendation of the Special Presidential Commission that His Excellency the President Gotabhaya Rajapaksha has appointed, in terms of the SPCOI Act No 7 of 1978. Thereafter this matter was supported for Notice and Interim Relief. This Court issued the order Notice on the



Respondents but not interim relief, holding that the opportunity to make decisions which were prejudicial to the Petitioner no longer existed (Order dated 9.5.2022).

As borne out by the proceedings dated 08.02.2023, the position with regard to the Report of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents was submitted by the Hon. Attorney General to this Court as follows;

I quote;

"All these applications invoke the jurisdiction of Your Lordships' Court to quash the recommendation of the Commission of Inquiry. If I may briefly call that Upali Abeyrathne commission Report, now My Lord they all came before Your Lordships Court and there were proceedings which were held before Your Lordships' Court on 30<sup>th</sup> of March 2021. I would like to advert to the proceedings of 30<sup>th</sup> March 2021."

"May I read page 02 of the proceedings, the learned President's Counsel appearing for the 6<sup>th</sup> Respondent somewhere in the middle of that proceedings in CA Writ 174/21 states as follows;"

"I have specific instructions from the President that His Excellency whilst being acutely conscious of there being very serious grievances of those who made genuine complaints of discrimination and victimization to the Presidential Commission of Inquiry that nevertheless in accordance with the rule of law that His Excellency is of the considered view, that prior to causing any of the recommendations or decisions contained in the report of the Justice Abeyrathne Commission, that His Excellency wishes to in the first instant, bring an objective mind to bear on the contents of the said report and the recommendations as well as, the final report of the Special Presidential Commission of Inquiry consisting of 02 sitting Judges of the Supreme Court and a Judge of the Court of Appeal, that has now been constituted by His Excellency the President Gotabhaya Rajapaksha for the purpose of furnishing final recommendations to His Excellency."

"The Hon. Attorney General has received oral instructions from the Secretary to His Excellency the President Gotabhaya Rajapaksha. He has not acted in the findings of the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents that are the Abeyrathne Commission report and has appointed another Special Presidential Commission in terms of Government Gazette. My submission here is the authority when he got the recommendations and findings of the Commission of Inquiry of Abeyrathne Commission for good reason he didn't act on it and instead forwarded those recommendations to be considered by a Special Presidential Commission consisting of two Judges of the Supreme Court and 01 Judge of Court of Appeal."

"Now Your Lordship may ask me what happened to the Special Presidential Commission of inquiry. Up to now from April last year, it came to a premature closure."

It did not make any recommendation; it did not make any finding. It was an abrupt end to the Special Presidential Commission and His Excellency in his wisdom thought it fit that not to grant any further extension to the Special Presidential Commission of Inquiry. While that process came to an end, in that case this Court delivered a judgment in CA-WRT-0173-22 in September 2022, popularly known as Janaka Bandara's Case. After Your Lordship delivered the judgment, it was brought to my attention as the Attorney General I wrote to the Cabinet of Ministers and wanted a policy decision taken across the board in respect for all these recommendations given by Upali Abeyrathne Commission and also made my suggestion that this matter should come to an end. The Cabinet of Ministers wanted to clarify before they took a final decision in four matters,

1. Whether the police;
2. The Commission to investigate Bribery and Corruption;
3. Whether the Attorney General;
4. Whether the Public Service Commission;

had taken any step with regard to the finding or recommendation made by Upali Abeyrathna Commission. The reports were forwarded to the Cabinet and all institutions took up uniform position that no action was taken to implement any of the recommendations of the Upali Abeyrathna Commission. Having been briefed with that My Lord, the Cabinet has taken a decision which was taken about a week ago with regard to that matter with the Special Presidential Commission of Inquiry coming to a standstill, premature closure there is no validity in going any further ahead with the Upali Abeyrathna Commission report. They stopped short of making any pronouncement on the Upali Abeyrathna Commission report but of course said that they will not interfere in the Court proceedings before Your Lordships' Court. Those are the very words which they said. It will not interfere in the proceedings initiated before Your Lordships Court. "

"Now having briefed Your Lordships Court based on what I just mentioned, my submission before Your Lordships Court is that the Upali Abeyrathna Commission Report, the appointing Authority in its wisdom thought it fit, it should not be acted on its own. It should go passed the shifting process of a Special Presidential Commission of inquiry. That Commission of inquiry it should be recorded that nothing flows from the Upali Abeyrathna Commission report. And it is a matter of futility with all due respect whether these cases should proceed I am not for a moment trying to debunk the position taken up by the Petitioner, but I am saying that nothing flows from it because it had a two-tier stage, one tier which had made the recommendation, the 2<sup>nd</sup> tier came to an abrupt end. So, what is left now, nothing flows from it. "

"In view of my submission which could be recorded, that is proceedings would be terminated and deserving the rights for the Petitioner to file a motion and reagitate those matters whenever they are advised to do so, otherwise with all due respect there is no live issue to be canvassed, except the recommendations of the Upali Abeyrathna Commission. If the Government says they don't want to implement with the presidential Commission inquiry, didn't even make any order on that therefore, what is left. I would suggest may be to look after their interest for the future before they may be worried that there might be peril in the future if somebody wants to take it up. So, terminate the proceedings but reserving their rights for the parties to reagitate this matter whenever they are advised to do so. These are my submissions and I thought it is fit that I should come and make these submissions before your lordships court so that appropriate order and also considered wisdom will be taken by my learned friend who is appearing for the Petitioner. "

Hon. Attorney General himself makes submissions and informs this Court that Cabinet has decided not to take any action regarding the Upali Abeyrathna Presidential Commission Report. Therefore, he is requesting this Court to terminate the proceeding.

The learned President's Counsel argued on behalf of the Petitioner that is it clear that the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents have lent themselves party to a political witch-hunt, and there is no legal basis whatsoever for the findings and the report. An examination of the mandate of the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents, it is crystal clear that there is no mandate for the recommendations made and the findings arrived at.

The said findings and recommendations and material collected is *ex-facie* and otherwise *ultra-vires* the powers of the Commission and the power given to it in terms of the mandate marked P2a, P2b, P3a and P3b. The Gazette marked P2(a), which set out the original mandate of the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents, as amended by P2(b). The findings far exceed the mandate set out in P2(a) as amended by P2(b). In the circumstances, *ex-facie*, the findings are *ultra-vires* the mandate of the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents.

It was the contention of the learned President's counsel for the Petitioner that in any event the findings and recommendations and material collected are grossly unreasonable. The findings and recommendations and material collected are nowhere in the vicinity of such that could be arrived at by a reasonably prudent person. On behalf of the Petitioner, he further submits that to put it in the famous words of Lord Diplock, the findings and recommendations so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

The evidence of this Petitioner, before the Commission has been clear in that, *inter alia*;

- a. The Anti-Corruption Committee and the Secretariat were established consequent to approval by the Cabinet of Ministers;

- b. The Cabinet of Ministers at the time, having deliberated decided to establish the committee;
- c. Prosecutions and actions have been initiated by the relevant law enforcement authorities, including, the Attorney General, the Police and the Commission to Investigate Allegations of Bribery; and
- d. Thereafter, respective Courts have taken cognizance of the matters and proceedings have been initiated in terms of the law.

The unequivocal position of the Petitioner is as follows;

- 1. at all material times it was the relevant authorities, including the Police, the Attorney General's Department and the Judiciary that investigated the complaints, took decisions to prosecute and carry out prosecutions in all cases; and,
- 2. at no point did the Petitioner interfere with such investigations and with such authorities.

It is crystal clear that there appears to be no finding that the Petitioner interfered and meddled with any proceedings and that the Petitioner manipulated and engineered any proceedings in a particular desired fashion. However, the recommendations, that have been arrived at, are gross unreasonable and far exceeds what a reasonably prudent person would arrive at, given the positions and the evidence before them. In the circumstances, the findings are unreasonable in the Wednesbury sense and ought to be quashed, on this ground alone. According to the learned Additional Solicitor General, the Hon. Attorney General's position appears to be as follows;

- a. the findings and recommendations and material collected in the report are not final and conclusive;
- b. that the findings and recommendations and material collected have been the subject matter of further Presidential Commission of inquiry;
- c. the term of the said presidential commission of inquiry has expired without extension and no outcome has been achieved;
- d. the Cabinet of Ministers and the relevant authorities including the Attorney General, the Bribery Commission and the Police have indicated that no actions have been and will be taken in terms of the findings and recommendations and material collected; and
- e. in the circumstances, this application would be futile.

On this position alone it is clear that the findings and recommendations and material collected are;

- i. baseless; and
- ii. in any event, completely *ultra vires*.

As set out earlier, in view of that, particularly the reputation of this Petitioner, these baseless findings cannot be allowed to stand. In view of the position of the Hon. Attorney General alone, there could not be any questions for this Petitioner's relief being granted. In these circumstances, there is no objection from the Respondents to the reliefs being granted.

In the case of Shell Gas Lanka Ltd. v. Consumer Affairs Authority and others [2008] 1 Sri LR 128 which was a matter regarding an inquiry under Section 13 of the Consumer Affairs Authority Act, it was held by Justice Sriskandarajah that;

"The duty of the court is to see that power shall not be exercised in unlawful and arbitrary manner, when exercise of such powers affects the basic rights of individuals. The courts should be alert to see that such powers conferred by the statute are not exceeded or abused. "

Dealing with an inquiry held under Section 18(3) of the Consumer Affairs Authority act, Justice Sripavan (as he then was) held in the case of Nestle Lanka Ltd. v. Consumer Affairs Authority and another [2005] 2 Sri LR 138, 141 that;

"Though the aforesaid section gives certain amount of discretion to the Authority in order to decide on the increase of a reasonable price, the exercise of such discretion necessarily implies good faith in discharging public duty. The abuse of power or discretion constitutes a ground of invalidity independent of excess of power. It is to be borne in mind that when a power granted for one purpose is exercised for a different purpose or a collateral object or in bad faith, the court will necessarily intervene and declare such act as illegal or invalid. Statutory powers conferred for public purposes are conferred upon trust and not absolutely. That is to say, that they can be validly used only in the right and proper manner."

"The lawful exercise of a statutory power presupposes not only compliance with the substantive and procedural conditions laid down for its performance but also with the implied requirements governing the exercise of the discretion. Thus, all statutory powers must be exercised fairly and reasonably, in good faith, for the purposes for which they are given with due regard to relevant considerations without being influenced by irrelevant considerations."

In the case of G.P.A De Silva and others v Sadique and Others (1978-79-80) SLR 166, 171, a divisional bench of 5 judges of the Supreme Court held that;

"The classic statement in regard to when a Writ of Certiorari will issue is however found in the judgment of Lord Atkin in R v Electricity Commissioners, in which he held that writs of certiorari and prohibition may "wherever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially act in excess of their legal authority"

In the case of Gregory Fernando and Others v. Stanley Perera, Acting Principal, Christ the King National School and Other [2004] 1 SLR 346, 349 Justice Sripavan (as he then was) stated that;

"it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The law is concerned with public confidence in the administration of justice; hence it is of paramount importance to ensure that individuals feel that they have been given a fair hearing before a decision is taken. "

In the case of Mahindapala and Others v. Minister of Lands and Land Development and Others [2009] 2 SLR 324, 327-328 it was held by Justice Lecamwasam that;

"...Had they followed the proper procedure petitioners would have got an opportunity to air their grievances. Failure on the part of the authorities to follow the procedure deprived the petitioners of that opportunity. One pillar of the doctrine of Natural Justice is the right to a fair hearing before an administrative authority acts or makes decisions affecting the rights of subjects..."

Addressing the general procedure required for a fair hearing, Wade (8<sup>th</sup> Edition) at pages 511-512 states as follows;

"A 'hearing' will normally be an oral hearing. But in some cases, it may suffice to give an opportunity to make representations in writing, provided that any adverse material is disclosed and provided, as always, that the demands of fairness as substantially met ....Where an oral hearing is given, it has been laid down that a tribunal must

- (a) consider all relevant evidence which a party wishes to submit;
- (b) inform every party of all the evidence to be taken into account, whether derived from another party or independently
- (c) allow witnesses to be questioned;
- (d) allow comment on the evidence and argument on the whole case."

In Gunadasa v. Attorney-General and Others [1989] 2 SLR 130, 133-134 it was held by Justice Gunawardana that;

"...It has been said by Lord Denning in the case of Kanda vs. Government of Malaya that, "If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him and then he must be given a fair opportunity to correct or contradict them."

"Hence the failure to give to the petitioner a fair opportunity to "correct or contradict" the said witnesses when they gave evidence, in my view has occasioned a violation of the principle of natural justice, that a man's defense must always be fairly heard. The non-observation of the said principle of natural justice would consequently amount to an error on the face of the record, which would attract the remedy of Writ of Certiorari"

Wade and Forsyth, Administrative Law (11<sup>th</sup> Edition; page 428) quote Lord Denning to state;

"if the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them"

"The fundamental rule is that, if a person may be subject to pains or penalties, or be exposed to prosecution or proceedings, or be deprived of remedies or redress, or is in some such way adversely affected by the investigations and report, then he should be told the matter against him and afforded a fair opportunity of answering it."

R vs. Race Relations Board, ex parte, Selvarajan, cited with approval in G.P.A De Silva and others v Sadique and Others (1978-79-80 1SLR 166, 171)

"if the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him and then he must be given a fair opportunity to correct or contradict them "

The unreasonableness should be considered as an important element when it comes to issuing of writs. The classic test of "unreasonableness" was set out in the landmark case of

the Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223, where it was held that if a decision is "so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it", same is liable to be quashed by way of a writ of certiorari.

In Dona Marian Sandya Kumari Kodduruarachchi vs Additional Secretary, Education quality Development [CA WRIT 343/2009] Decided 30.05.2013 Anil Gooneratne J observed that:

The hallmark of the Wednesbury connotation of unreasonableness is that the repository of discretion, although acting within the four corners of the legislative grant of discretion, has arrived at a decision which is repugnant to all reason. -Recent Developments in Administrative Law- G.L. Pieris pg. 189.

In those circumstances, it is clear that in the event the court finds a decision to be unreasonable in the Wednesbury sense, the Courts have had no hesitation in quashing such a decision, on such ground alone.

The writ sought in the prayer to the Petitioner is granted. The findings and the final report are quashed as sought.

Wade and Forsyth Administrative Law 10<sup>th</sup> Edition deals with the power of issuing Writs of Certiorari and Prohibition when the lower Tribunal has acted in excess of Jurisdiction on pages 214 and 215, where there is a breach of natural justice on pages 372 to 379, where there is a lack of fair hearing at pages 405 to 408 and bias at pages 389 to 392.

Wade and Forsyth administrative Law in 12<sup>th</sup> Edition at page 398 under the sub heading "Acting Fairly", refers to the case of Furnell vs. Whangarei High School Board [1973] A. C. 660 at 679 where Lord Morris said, that,

"Natural justice is but fairness writ large and judicially."

At the same page the learned writers have also referred to the dicta of Lord Diplock in Regina vs. Commission for Racial Equality ex parte Hillingdon LBC [1982] A. C. 779 where Lord Diplock said,

"Where an Act of Parliament confers upon an administrative body functions which involve its making decisions which affect to their detriment the rights of other persons or curtail their liberty to do as they please, there is a presumption that Parliament intended that the administrative body should act fairly towards those persons who will be affected by their decision".

Hence it appears to this Court, that, as the obligation to exercise powers and discretion fairly extends to administrative bodies too, there is no question about its application to judicial and quasi-judicial bodies.



It is also submitted, that, it was said in Roberts vs. Hopewood, 1925, Appeal Cases 578, that;

“I rest my opinion on higher grounds. A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so – he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs. He must act reasonably.” (Lord Wrenbury, page 613).

It is important to note that there are a few cases in which the matters of Writs concerning the Presidential Commission of Inquiry were decided.

- (a) Dharmaratne vs Samaraweera and Others 2004 1 SLR 57
- (b) Mendis. Fowzie and others vs. Goonewardena (1979) 2 SLR 322
- (c) Seneviratne vs. Tissa Dias Bandaranayake and Another (1999) 2 SLR 341
- (d) B. Sirisena Cooray vs. Tissa Dias Bandaranayake and two Others (1999) 1 SLR 1

Article 140 of the Constitution prescribes the Law under which this Court can issue Writs in the nature of Certiorari, Mandamus and Prohibition.

This Court issue a Writ of Certiorari quashing the findings, decisions, material and recommendations of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents in the final report, in respect of the Petitioner, regarding the complaint bearing No. PCI/PV/01/Com./50/2020\_made by the 7<sup>th</sup> Respondent dated 31/01/2020 marked as (X).

Considering the circumstances, we make no order for cost.

**President of the Court of Appeal**

**D.N. Samarakoon J.**

**I agree.**

**Judge of the Court of Appeal**

**M.T. Mohammed Laffar J.**

**I agree**

**Judge of the Court of Appeal**