

**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 for  
mandates in the nature Certiorari and  
Prohibition*

**CA (Writ) Application Nos.**  
**577/2021**  
**597/2021**  
**607/2021**

1. J.B. Gurusinghe,  
No. 63A/98, Weera Keppetipola  
Mawatha, Bandarawatta, Gampaha.
2. Danuth Y. Illukkumbura,  
No. 28, Temple Road, Nawala.
3. B.A.S. Mendis,  
No. 603/2/6, Pubudu Mawatha,  
Ihalabiyanwila, Kadawatha.
4. Mechanical Superintendent Union of the  
Department of Government Factory,  
Department of Government Factory,  
Kolonnawa
5. G.J.C. Silva,  
President, Mechanical Superintendent  
Union of the Department of Government  
Factory, Department Factory of  
Government, Kolonnawa
6. Ajantha Ruwanpathirana,  
Secretary, Mechanical Superintendent  
Union of the Department of Government  
Factory , Department of Government  
Factory, Kolonnawa.
7. Provincial Public Service Engineering  
Diploma Holders Association, 243/2,  
Pahala Bomiriya, Kaduwela.
8. J.C. Hettiarachchi,

President, Provincial Public Service Engineering Diploma Holders Association, 243/2, Pahala Bomiriya, Kaduwela.

9. K. Prasanna Peiris,  
Secretary, Provincial Public Service Engineering Diploma Holders Association, 243/2, Pahala Bomiriya, Kaduwela.

10. Association of Examiners of Motor Vehicles, Department of Motor Traffic, Werahara, Boralessgamuwa.

11. P.A.D. Ruwan Maldeniya,  
President, Association of Examiners of Motor Vehicles, Department of Motor Traffic, Werahara, Boralessgamuwa.

12. W.G.C.J. Gamage,  
Secretary, Association of Examiners of Motor Vehicles, Department of Motor Traffic, Werahara, Boralessgamuwa.

13. Irrigation Engineering Diplomates' Association, No. 15, Melford Crescent, Dehiwala

14. W.A.P. Anushka De Silva,  
President, Irrigation Engineering Diplomates' Association, No. 15, Melford Crescent, Dehiwala

15. B.P.D. Nuwan Somaweera,  
Secretary, Irrigation Engineering Diplomates' Association, No. 15, Melford Crescent, Dehiwala.

16. Road Development Authority Engineering, Diplomates Association, "Maga Neguma Maha Medura", No. 216,

Srimath Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.

17. Pannilage Rohana,  
Vice President, Road Development  
Authority Engineering, Diplomates  
Association, "Maga Neguma Maha  
Medura", No. 216, Srimath Denzil  
Kobbekaduwa Mawatha, Koswatta,  
Battaramulla.
18. Nadeeshani Rajapaksha,  
Secretary, Road Development Authority  
Engineering, Diplomates Association,  
"Maga Neguma Maha Medura", No. 216,  
Srimath Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
19. Sri Lanka Broadcasting  
Corporation Technical officer's Union,  
Sri Lanka Broadcasting Corporation,  
Colombo 07.
20. K.P.D.S. Karunanayaka,  
Assistant Secretary, Sri Lanka  
Broadcasting Corporation Technical  
officer's Union, Sri Lanka Broadcasting  
Corporation, Colombo 07.
21. G.T.K. Kumara,  
Secretary, Sri Lanka Broadcasting  
Corporation Technical officer's Union,  
Sri Lanka Broadcasting Corporation,  
Colombo 07.
22. Sri Lanka Technical officer's  
Union, Sri Lanka Rupavahini  
Corporation Rupavahini Corporation,  
Colombo 07.
23. D.G. Arunashantha Rathnayaka,  
President, Sri Lanka Rupavahini  
Corporation Technical officer's Union,

Sri Lanka Rupavahini Corporation,  
Torrington Square, Colombo 07.

24. R.M. Anuradha Rathnayaka,  
Secretary, Sri Lanka Rupavahini  
Corporation Technical officer's Union,  
Sri Lanka Rupavahini Corporation,  
Torrington Square, Colombo 07.
25. National Water Supply and  
Drainage Board, Engineering  
Diplomates' Association, National Water  
Supply and Drainage Board Head office,  
Galle Road, Rathmalana.
26. Egoda Hetiarachchige Don  
Subadra, President, National Water  
Supply and Drainage Board,  
Engineering Diplomates' Association,  
National Water Supply and Drainage  
Board Head office, Galle Road,  
Rathmalana.
27. S.M. Lalith Asoka De Alwis,  
Secretary, National Water Supply and  
Drainage Board, Engineering  
Diplomates' Association, National Water  
Supply and Drainage Board Head office,  
Galle Road, Rathmalana.
28. Airport and Aviation Maintenance  
Management Officer's Association,  
Airport and Aviation Services (Sri Lanka)  
Limited Maintenance Complex,  
Bandaranaike International Airport,  
Katunayake.
29. Upul Rathnayake, President,  
Airport and Aviation Maintenance  
Management Officer's Association,  
Airport and Aviation Services (Sri Lanka)  
Limited Maintenance Complex,

Bandaranaike International Airport,  
Katunayake.

30. A. M. A. S. N. Parakum  
Marasinghe, Secretary, Airport and  
Aviation Maintenance Management  
Officer's Association, Airport and  
Aviation Services (Sri Lanka) Limited  
Maintenance Complex, Bandaranaike  
International Airport, Katunayake.
31. Central Engineering Consultancy  
Bureau, Engineering Diplomates' Union,  
No. 415, Bauddhaloka Mawatha,  
Colombo.07.
32. N.M.C. Priyantha,  
President, Central Engineering  
Consultancy Bureau, Engineering  
Diplomates' Union, No. 415,  
Bauddhaloka Mawatha, Coiombo.07.
33. S.M.G. Kanchana De Silva,  
Secretary, Central Engineering  
Consultancy Bureau, Engineering  
Diplomates' Union, No. 415,  
Bauddhaloka Mawatha, Colombo.07.
34. Telecommunication Engineering  
Diplomates Union, 2nd, Floor, Overseas  
Telecommunication Services P.O. Box,  
235, Colombo.
35. K. Dhanushka Srihan,  
Joint Secretary, Telecommunication  
Engineering Diplomates Union, 2nd  
Floor, Overseas Telecommunication  
Services P.O. Box, 235, Colombo.
36. G. Canchana Dahanayaka, Joint  
Secretary, Telecommunication

Engineering Diplomates Union, 2nd Floor, Overseas Telecommunication Services P.O. Box, 235, Colombo.

37. Independent Television Network, Technical- officers' Union, Independent Television Network, Wikramasinghepura, Battaramulla.

38. G.D. Chaminda, Vice President, Independent Television Network, Technical officers' Union, Independent Television Network, Wikramasinghepura, Battaramulla.

39. Siththracharige Jagath, Secretary, Independent Television Network, Technical officers' Union, Independent Television Network, Wikramasinghepura, Battaramulla.

### **PETITIONERS**

1. Engineering Council Sri Lanka, No. 230, Bauddhaloka Mawatha, Colombo 07.
2. Thilak De Silva, Chairman, Engineering Council Sri Lanka, No. 230, Bauddhaloka Mawatha, Colombo 07.
3. Hon. Chamal Rajapaksa, M.P., Minister of Irrigation, Ministry of Irrigation and Water Resources Management, No. 500, T. B. Jayah Mawatha, Colombo 10.

4. D. M. Anura Dissanayake,  
Secretary to the Ministry of Irrigation,  
Ministry of Irrigation and Water  
Resources Management,  
No. 500, T. B. Jayah Mawatha,  
Colombo 10.

**RESPONDENTS**

Before: M. T. MOHAMMED LAFFAR, J.

Counsel: Nilshantha Sirimanna with Deshara Goonetilleke and Amaya  
Fernando for the Petitioners.

Arjuna Kurukulasuriya for the 01<sup>st</sup>, 02<sup>nd</sup> and 03<sup>rd</sup> Respondents.

Chaya Sri Nammuni, D.S.G. with Pulina Jayasuriya, S.C. for  
the 03<sup>rd</sup> and 04<sup>th</sup> Respondents.

Argued on : 17.07.2024

Written Submissions on : 30.08.2024 (by Petitioners)

Decided on : 26.09.2024

**MOHAMMED LAFFAR, J.**

It is noted at the outset that the present judgment shall also apply, *mutatis mutandis*, to CA (Writ) Application Nos. 597/21 and 607/21, as the issues raised and the legal questions presented therein are identical to those adjudicated upon in this matter. Accordingly, this judgment is to be treated as common to all three cases.

The Petitioners have instituted this action challenging the legality of Circular No. 01/2021, issued by and under the authority of the Respondents, namely the Engineering Council of Sri Lanka (ECSL). Their petition primarily rests on the assertion that the ECSL has exceeded its statutory mandate as outlined

in the Engineering Council, Sri Lanka Act No. 4 of 2017. The Petitioners are seeking writs of Certiorari to quash Circular No. 01/2021 and writs of Prohibition to restrain the ECSL from enforcing its unlawful provisions, which they argue overstep the ECSL's statutory mandate and violate their rights as professionals.

### **Petitioners' Contention**

The Petitioners argue that the ECSL's issuance of Circular No. 01/2021 is *ultra vires*, beyond its legal authority. They contend that the Engineering Council Act clearly defines the categories of engineering practitioners subject to regulation under the Act, namely Chartered Engineers, Associate Engineers, Affiliate Engineers, Incorporated Engineers, Engineering Diplomates, and Engineering Technicians (marked 'P-5'). The Petitioners allege that the Circular unlawfully mandates registration for all engineers, regardless of whether they fall within the specific categories outlined by the Act. This broad imposition of mandatory registration exceeds the ECSL's powers, as the Act does not contemplate the inclusion of other engineering professionals, such as those holding foreign qualifications or practical experience in specialized fields like Marine Engineering, Automotive Engineering, and Biomedical Engineering (marked 'P-6').

The Petitioners submit that, prior to the enactment of the Engineering Council Act in 2017, the engineering profession in Sri Lanka was largely unregulated, with engineers practicing based on internationally recognized standards. They argue that the Circular, by imposing a mandatory registration requirement and penal consequences for non-compliance, represents a drastic and unexpected shift in the professional landscape (marked 'P-6'). The Petitioners assert that they had a legitimate expectation that the profession would not be subjected to such abrupt and far-reaching changes without proper consultation or statutory justification. They further contend that this shift violates their reliance on the long-standing regulatory framework, which allowed for greater professional autonomy (marked 'P-6').



The Petitioners further contend that the Circular is discriminatory and creates an unfair monopoly in favour of engineers registered with the Institute of Engineers, Sri Lanka (IESL) and the Institution of Incorporated Engineers, Sri Lanka (IIESL).

The Petitioners also challenge the procedural validity of the Circular, arguing that the ECSL failed to comply with the procedural requirements outlined in the Engineering Council Act. Specifically, Section 39 of the Act mandates that any rules made by the ECSL must be published in the Government Gazette (marked 'P-5'). The Petitioners contend that the Circular, despite carrying the force of law, was not subjected to the statutory rule-making process, thereby violating principles of procedural fairness and transparency.

### **Respondents' Contention**

The Respondents, in principle, deny the allegations of the *ultra vires* action and contend that Circular No. 01/2021 falls fully within the statutory powers granted to the ECSL under the Engineering Council, Sri Lanka Act No. 4 of 2017.

The Respondents further assert that the matter falls within the ambit of Article 126(3) of the Constitution, which confers jurisdiction upon the Supreme Court to adjudicate fundamental rights violations. They argue that the Petitioners' claims, even if valid, should be addressed through fundamental rights litigation rather than by invoking the writ jurisdiction of the Court of Appeal. Additionally, the Respondents contend that the Petitioners' application is time-barred under the relevant constitutional provisions governing such claims.

The Respondents assert that Circular No. 01/2021 was issued pursuant to the ECSL's statutory authority under Sections 12, 13, and 39 of the Act. Section 12 of the Act authorizes the ECSL to make representations to the Government and other relevant bodies on matters related to the practice of the engineering profession. The Respondents argue that the Circular falls

squarely within this mandate, as it aims to regulate the professional standards and conduct of engineers in Sri Lanka. They further contend that Section 13(e) of the Act empowers the ECSL to determine the terms and conditions of regulation for engineering practitioners, while Section 39 allows the ECSL to promulgate rules related to the registration and qualifications of practitioners. In issuing Circular No. 01/2021, the Respondents argue that the ECSL has merely exercised these powers to ensure that engineers meet the requisite standards of competence and professionalism.

The Respondents assert that the purpose of the Circular is to establish a uniform system of registration and professional recognition for all engineers in Sri Lanka, in line with international standards. They argue that the regulation of engineering practitioners is essential for safeguarding the public interest, ensuring professional integrity, and aligning Sri Lankan engineering standards with international accords, such as the Washington, Sydney, and Dublin Accords (marked 'R2'). The Respondents emphasize that by introducing a mandatory registration system, the ECSL is helping to raise the standards of engineering practice in Sri Lanka and ensuring that all practitioners are properly qualified and competent (marked 'R2').

The Respondents deny the Petitioners' allegations of discrimination and favouritism. They argue that the Circular applies uniformly to all engineering professionals, regardless of their background or qualifications (marked 'R6'). The Respondents further state that the IESL and IIESL are recognized as professional bodies by law, and the Circular merely implements the statutory requirement that all engineering practitioners, including those affiliated with these institutions, must meet certain professional standards (marked 'R5'). They argue that the registration requirement is designed to create a more organized and professionally recognized engineering sector and is not intended to unfairly benefit members of any specific institution (marked 'R6').

The Respondents assert that the Circular is consistent with the legislative intent of the Act, which was to create a central regulatory body to oversee the engineering profession and ensure compliance with international standards.

### **Observations of the Court**

The Petitioners, who represent a broad spectrum of trade unions and engineering professionals, seek judicial review of Circular No. 01/2021, issued by the 1<sup>st</sup> Respondent, the Engineering Council of Sri Lanka (ECSL), and its Chairman, the 2<sup>nd</sup> Respondent. This Circular mandates registration of all engineers, regardless of their qualifications, with the ECSL and introduces penal consequences for non-compliance. The Petitioners assert that the Circular is ultra vires, arbitrary, discriminatory, and issued with mala fides, in contravention of their legitimate expectations. Upon a thorough examination of the submissions and the law, this court has observed that this matter undoubted warrants judicial intervention.

### **Statutory Overreach and Ultra Vires Action by the ECSL**

The Petitioners' principal argument is grounded in the doctrine of ultra vires, alleging that the ECSL, in issuing Circular No. 01/2021, exceeded its statutory powers as prescribed under the Engineering Council, Sri Lanka Act No. 4 of 2017 (hereinafter referred to as "the Act"). The Act strictly confines the ECSL's regulatory mandate to six specified categories of "engineering practitioners," as enumerated in Section 41 and Schedule A of the Act, namely: Chartered Engineers, Associate Engineers, Affiliate Engineers, Incorporated Engineers, Engineering Diplomates, and Engineering Technicians (marked 'P-5').

The Petitioners highlight that the Circular seeks to impose registration on all persons engaging in engineering, irrespective of whether they fall within the specified categories of "engineering practitioners" recognized by law. This, they argue, represents a gross statutory overreach. The Petitioners contend that Section 14 of the Act mandates only those professionals classified under the six categories to register with the ECSL. The Act does not envisage a

scenario where engineers who do not meet these criteria, including those holding foreign qualifications or working in specialized fields such as Marine Engineering, Biomedical Engineering, and other non-IESL/IIESL-recognized fields, would be subject to mandatory registration (marked 'P-6').

The strength of this argument is compelling as it relies on the express and unambiguous language of the statute. A close reading of the Act reveals no provision that permits the ECSL to extend its regulatory scope beyond the specific classes of professionals mentioned therein. The rule-making power conferred upon the ECSL under Section 39 of the Act is similarly limited to making rules concerning registration procedures, standards of practice, and maintaining the professional conduct of those already falling under the defined categories. The ECSL's attempt to regulate professionals outside this scope constitutes an unlawful exercise of power, and thus, the issuance of the Circular is clearly ultra vires.

### **Violation of the Petitioners' Legitimate Expectations**

The doctrine of legitimate expectation is a cornerstone of administrative law, safeguarding individuals from arbitrary state action, especially where long-standing practices have engendered reliance. The Petitioners argue that prior to the enactment of the Act in 2017, the engineering profession in Sri Lanka was largely self-regulated, with engineers engaging in their respective fields based on internationally recognized standards and practices. Engineers were not required to register with any central body, and many professionals relied on this autonomy when building their careers (marked 'P-6').

The Circular, by mandating registration and criminalizing non-compliance, represents a significant shift in the regulatory landscape. The Petitioners assert that they had a legitimate expectation that any such drastic regulatory changes would not be introduced without adequate consultation and legal basis. Furthermore, the expectation that professionals would not be required to register with a central body unless explicitly mandated by law was reasonable and legitimate, given the absence of any prior regulatory

framework requiring such registration for a vast majority of engineers (marked 'P-6').

In this case, the Petitioners' legitimate expectation was that their professional status and rights would not be unilaterally altered, particularly in a manner that could jeopardize their careers and livelihoods. The abrupt imposition of mandatory registration, combined with penal provisions for non-compliance, constitutes a violation of this expectation. The ECSL, in acting without proper statutory authority, failed to give due regard to the legitimate reliance interests of the Petitioners, thereby violating principles of fairness in administrative action.

### **Discrimination and Arbitrary Favouritism**

Another aspect of the Petitioners' argument focuses on the discriminatory and arbitrary nature of the Circular. They contend that the ECSL, through the Circular, has introduced a regulatory regime that disproportionately favours members of the Institute of Engineers, Sri Lanka (IESL) and the Institution of Incorporated Engineers, Sri Lanka (IIESL). The Petitioners emphasize that a majority of the ECSL's members are drawn from these two professional bodies, creating an inherent bias in favour of engineers who possess qualifications recognized by these institutions. Consequently, the Circular seeks to compel all engineers, including those with foreign qualifications or specialized knowledge in fields not recognized by IESL or IIESL, to conform to the ECSL's registration requirements (marked 'P-6').

This effectively creates an exclusionary regime where professionals who are not affiliated with IESL or IIESL are marginalized, unable to register, and consequently, ineligible for employment or promotions within both the public and private sectors. The Petitioners submit that the Circular's requirement for mandatory registration, without accounting for the diversity of qualifications held by engineers, is not only discriminatory but also creates an artificial monopoly within the profession. The result is that only a narrow group of engineers, those affiliated with IESL and IIESL, benefit from the

regulatory scheme, while others are unlawfully excluded (marked 'P-7 (a) to (f)').

This argument is particularly persuasive as it highlights the risk of regulatory capture, where a regulatory body like the ECSL, composed of representatives from certain professional groups, enacts rules that unduly benefit its members while excluding others. The Petitioners' claim of arbitrary favouritism is supported by the composition of the ECSL and the disproportionate advantages conferred upon those who are members of IESL and IIESL, thereby contravening the fundamental principles enshrined in our legal system.

#### **Failure to Follow Procedural Requirements and Absence of Proper Rule-Making**

It is also observed that the ECSL, in issuing the Circular, failed to comply with the procedural requirements prescribed by the Act. Specifically, Section 39 of the Act mandates that any rules made by the ECSL must be published in the Government Gazette, thereby ensuring transparency and public participation in the regulatory process. The Petitioners contend that the ECSL bypassed this requirement, opting instead to issue a Circular that carries the force of law without adhering to the statutory rule-making process (marked 'P-6').

The ECSL's failure to follow the proper procedure is a serious flaw, as it deprives affected parties of the opportunity to challenge or provide input on the rules being promulgated. Furthermore, the absence of a properly defined hierarchy among engineering practitioners - one that accounts for both academic qualifications and practical experience - creates confusion and uncertainty within the profession. It is argued that any attempt to regulate engineers without first establishing such a hierarchy is both arbitrary and irrational. This argument underscores the ECSL's lack of preparedness and its failure to establish a coherent regulatory framework before issuing far-reaching directives through the Circular.

This court is of the view that the Respondents failed to address a key issue raised by the Petitioners: the ECSL's mandate is expressly limited to six specific categories of engineering practitioners. The Act does not provide the ECSL with blanket authority to regulate all engineers or impose registration requirements on professionals who do not fall within the defined categories. Furthermore, while the ECSL has a legitimate interest in maintaining professional standards, it must do so within the bounds of the law. The ECSL cannot use its regulatory powers to extend its authority beyond what is clearly prescribed by the statute.

It is also noted that contrary to the view submitted by the Respondents, the Petitioners have demonstrated that the ECSL's composition and the nature of the Circular disproportionately favour members of two institutions. The failure to recognize foreign qualifications or practical experience gained outside the IESL/IIESL framework creates an exclusionary system that unfairly prejudices many professionals. This discrimination cannot be justified by general claims of maintaining standards, particularly when the regulatory framework is clearly biased in favour of a select group of engineers.

### **Conclusion**

Upon considering the submissions and legal principles, the Petitioners have established a clear and compelling case for the relief sought. The ECSL's issuance of Circular No. 01/2021 is ultra vires and exceeds the scope of its statutory mandate as prescribed under the Engineering Council, Sri Lanka Act. The Circular unlawfully expands the ECSL's regulatory power to include professionals who are not classified as "engineering practitioners" under the Act, thereby infringing upon the rights of a vast majority of engineers in Sri Lanka. Furthermore, the Petitioners have convincingly argued that the Circular violates their legitimate expectations and imposes an unjust and discriminatory regulatory regime that disproportionately favours members of the IESL and IIESL. The ECSL's failure to follow proper rule-making procedures, as mandated by the Act, further undermines the validity of the Circular.

It is to be noted in this context that, the court of law will always strive to restore fairness, prevent undue harm to any professional body, and ensure that the state authorities/bodies act within the scope of their lawful authority.

In light of the foregoing, this Court finds that the conduct of the Respondents is palpably wrong and legally unsustainable. The Petitioners have established a clear entitlement to the relief sought. Accordingly, reliefs sought for in prayers (b), (c), (e), (f), (g), (h), (i), (j), (k), (l) and (m) are granted quashing Circular No. 01/2021, along with any effects or consequences arising from its issuance.

*Cost of Rs. 50,000/- is imposed on the 2<sup>nd</sup> Respondent payable from his personal funds.*

*Application allowed.*

JUDGE OF THE COURT OF APPEAL