

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

**Gamini Suranjith De Silva**  
No. 3, Anderson Road,  
Colombo 05.

**Petitioner**

CA Writ Application No: 313/2018

Vs.

1.     **The Sri Lanka Institute Of Architects**  
No. 120/7, Vidya Mawatha,  
Colombo 07.
2.     **D. H. Wijewardene**  
President,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.
- 2A.   **Veranjan Kulukulasuriya**  
Past President,  
The Sri Lanka Institute of  
Architects,

No. 120/7, Vidya Mawatha,  
Colombo 07.

**2A Added Respondent**

3. **Rohana Bandara Herath**  
Former Secretary to the Sri Lanka  
Institute of Architects,  
Senior Vice – President and  
Secretary to the Disciplinary  
Committee,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

- 3A. **Ranjan Suraweera**  
Secretary to the Sri Lanka Institute  
of Architects and Secretary to the  
Disciplinary Committee,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**3A Added Respondent**

4. **Rukshan Widyalkara**  
Past President of the Council,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

- 4A. **D. H. Wijewardene**  
Past President of the Council,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**4A Added Respondent**

5. **Veranjan Kulukulasuriya**  
Senior Vice President,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.
- 5A. **Russell Dandeniya**  
Former Senior Vice President and  
President,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**5A Added Respondent**

6. **Salinda Rathugama**  
Former Treasurer and Chairman,  
Board of Management,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.
- 6A. **Dilummini DE Mel**  
Former Treasurer and Vice-  
President,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**6A Added Respondent**

7. **Michelle Fonseka**  
Assistant Secretary,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,

Colombo 07.

**7A. Salinda Rathugama**

Former Assistant Secretary and  
Chairman Board of Management,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**7A Added Respondent**

**8. Migara Alwis**

Former Assistant Treasurer and  
Chairman, Professional Affairs  
Board,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8A. Damith Premathilaka**

Assistant Treasurer and Treasurer,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8A Added Respondent**

**8B. Lal Abeyratne**

Council member,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8B Added Respondent**

- 8C. Thilan Koththigoda**  
Council member,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8C Added Respondent**

- 8D. Nandaka Jayasinghe**  
Former Council member and  
Assistant Secretary,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8D Added Respondent**

- 8E. Surindu Basnayake**  
Council member,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8E Added Respondent**

- 8F. Muditha Premathilaka**  
Council member,  
The Sri Lanka Institute of Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8F Added Respondent**

- 8G. Kosala Weerasekara**  
Council member,  
The Sri Lanka Institute of  
Architects,

No. 120/7, Vidya Mawatha,  
Colombo 07.

**8G Added Respondent**

- 8H. Upendra Randeniya**  
Former Chairman,  
Professional Affairs Body and  
Secretary,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8H Added Respondent**

- 8I. Chinthaka Nikapitiya**  
Chairman,  
Board of Architectural Publications,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**Added 8I Respondent**

- 8J. Nala De Zoysa**  
Chairman,  
Board of Architectural Education,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8J Added Respondent**

- 8K. Peshali Perera**  
Assistant Treasurer  
Chairman of the Board of  
Architectural Education,

The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8K Added Respondent**

- 8L. Prasanna Silva**  
Chairman of the Board of  
Architectural Education,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8L Added Respondent**

- 8M. Sagara Jayasinghe**  
Chairman of the Board of  
Architectural Publication,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8M Added Respondent**

- 8N. Minda Isuru Gamanayake**

- 8O. Piumal Fernando**

- 8P. C P Samarasinghe**  
Council member,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8N to 8P Added Respondents**

- 8Q. **Vishaka Rathnayake**  
Secretary,  
Board of Architectural Education,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8Q Added Respondent**

- 8R. **Susil Lamaheewa**  
Secretary,  
Board of Architectural Publications,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

**8R Added Respondent**

9. **Russell Dandeniya**  
Chairman, Investigating Committee  
and the President,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

10. **Members – Investigating  
Committee**  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.

11. **Chairman**  
Disciplinary Committee,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,



Colombo 07.

12. **Members**  
Disciplinary Committee,  
The Sri Lanka Institute of  
Architects,  
No. 120/7, Vidya Mawatha,  
Colombo 07.
13. **Ranjan Nadesapillai**  
No. 16, Ratnayake Mawatha,  
Pelawatta, Battaramulla.
14. **CML-MTD Construction Limited**  
No. 155, Dharmapala Mawatha,  
Colombo 07.
15. **The Design Group Five International  
(Private) Limited**  
No. 3, Anderson Road,  
Colombo 05.

**Respondents**

**Before** : Dhammika Ganepola, J.

**Counsel** : Sanjeewa Jayawardena PC with Lakmini  
Warusavithane instructed by M/S  
Neelakandan & Neelakandan for the  
Petitioner.  
Viran Fernando with Chinthani Kaushalya  
instructed by Lanka Dharmasiri for the 1<sup>st</sup>  
to 12<sup>th</sup> Respondents.  
Harsha Fernando, PC with Chamith

Senanayake and Thenura Samarasuriya  
instructed by Jagath Talgaswattage for  
the 13<sup>th</sup> Respondent.

Uditha Egalahewa, PC WITH N.K.

Ashokbharan instructed by H.

Chandrakumar de Silva for the 14<sup>th</sup>  
Respondent.

**Argued on** : 10.06.2024, 08.08.2024, 27.08.2024,  
01.10.2024, 06.11.2024, 27.02.2025

**Written Submissions** : Petitioner : 21.05.2025  
**tendered on** 13<sup>th</sup> Respondent : 04.04.2025  
14<sup>th</sup> Respondent : 08.04.2025  
15<sup>th</sup> Respondent : 08.04.2025  
12<sup>th</sup> Respondent : 02.05.2025

**Decided on** : 30.06.2025

**Dhammika Ganepola, J.**

### **Factual Matrix of the Case**

The Petitioner is a Chartered Architect who heads the 15<sup>th</sup> Respondent Company, which is engaged in architectural consulting. The 13<sup>th</sup> Respondent is also an Architect who made a complaint to the 1<sup>st</sup> Respondent, the Sri Lanka Institute of Architects, against the Petitioner, alleging that the Petitioner has violated the Regulations of the Sri Lanka Institute of Architects (herein after sometimes referred to as “Regulations”) published in Government Gazette Notification No.1416/10 dated 25.10.2005 marked P24A. The 14<sup>th</sup> Respondent is a Company engaged in the field of construction. The 2<sup>nd</sup> to 9<sup>th</sup> Respondents constitute the Council of the 1<sup>st</sup> Respondent Institute, which directed the Disciplinary Committee of the Sri Lanka Institute of Architects to proceed with filing disciplinary action against the Petitioner. The 9<sup>th</sup> and 10<sup>th</sup> Respondents are the Chairman and members of the Investigating

Committee of the 1<sup>st</sup> Respondent Institute, who are required by law to report to the Council as to whether a *prima facie* case has been made out against the Petitioner. The 3<sup>rd</sup>, 11<sup>th</sup> and 12<sup>th</sup> Respondents constitute the Disciplinary Committee of the 1<sup>st</sup> Respondent Institute.

On or around 15.03.2017, the Petitioner had been informed by the 13<sup>th</sup> Respondent over the phone that he had been made to understand that the 14<sup>th</sup> Respondent had requested a meeting with the Petitioner for a project which he presumed would be for the development of a land at Mayura Place, Colombo 6. The Petitioner states that in a meeting held on 16.03.2017, the 14<sup>th</sup> Respondent informed the Petitioner that the 14<sup>th</sup> Respondent Company had secured a property at Mayura Place, Colombo 06, and that the Company wishes to develop a high-rise apartment complex. The Petitioner had been asked whether the 15<sup>th</sup> Respondent would agree to submit the proposal in this regard. During the same meeting, the Petitioner informed the 14<sup>th</sup> Respondent that the 13<sup>th</sup> Respondent had communicated to him that he was working on this project. However, the 14<sup>th</sup> Respondent had stated that there was no such engagement whatsoever with the 13<sup>th</sup> Respondent. Thereafter, the Petitioner had received a letter dated 21.03.2017(P6) from the 14<sup>th</sup> Respondent requesting the 15<sup>th</sup> Respondent Company to submit a design proposal for the proposed apartment development complex at Mayura Place, Colombo 06.

Accordingly, on the request of the 14<sup>th</sup> Respondent, the 15<sup>th</sup> Respondent had made its presentation on 31.03.2017. Subsequently, the Petitioner had become aware that the 13<sup>th</sup> Respondent had also made a presentation to the 14<sup>th</sup> Respondent for the same project on the same date. Thereafter, Ms. Theasha Amaratunga, Manager, New Building Project and Design of the 14<sup>th</sup> Respondent, had informed the Petitioner by letter dated 03.04.2017(P6A), that the Board of Directors of the 14<sup>th</sup> Respondent has accepted the design proposal submitted by the 15<sup>th</sup> Respondent. Thereafter, the 13<sup>th</sup> Respondent by letter dated 07.04.2017(P8) had informed the Petitioner that the Ranjan Nadesapillai Associates has been actively engaged as appointed architects for the same project at Mayura Place. In response to the said letter marked P8, the Managing Director of the 14<sup>th</sup> Respondent informed the 13<sup>th</sup> Respondent that there is no such understanding as specified therein by his letter dated 19.04.2017(P10). The Petitioner states that as per the letter, P10 engagement of the 13<sup>th</sup> Respondent was limited up to the

preparation of the conceptual design in respect of the above–mentioned project.

Thereafter, the 13<sup>th</sup> Respondent had informed the Petitioner (by letters marked P12, P13 and P13A) that the 14<sup>th</sup> Respondent has not settled his professional claims. However, the 14<sup>th</sup> Respondent, by his letter dated 24.05.2017(P14), copied to the Petitioner, informed the 13<sup>th</sup> Respondent that the 14<sup>th</sup> Respondent has deposited the sum of Rs. 2,735,780.00 to the 13<sup>th</sup> Respondent's Bank account by invoice dated 15.09.2016 (P14A) as a full and final settlement. Accordingly, the Petitioner informed the 13<sup>th</sup> Respondent by letter dated 26.05.2017 marked P16 that, in view of the above settlement of dues that there is no further cause to complain, and that the Petitioner has not contravened any provision under the Code of Conduct of the 1<sup>st</sup> Respondent Institute. In response, the 13<sup>th</sup> Respondent had informed the Petitioner that the 14<sup>th</sup> Respondent had only made a part payment of his professional fees dues (P17). The 13<sup>th</sup> Respondent's stance was that a balance of Rs. 23,753,250.00 is due from the 14<sup>th</sup> Respondent. Afterwards, the Petitioner had become aware that the 14<sup>th</sup> Respondent had informed the 13<sup>th</sup> Respondent that all payments that were due had been settled in full and at no stage had the parties reached an agreement to obtain the professional services of the 13<sup>th</sup> Respondent (P23).

Thereafter, the Petitioner had come to know that a complaint dated 11.07.2017(P24) had been lodged by the 13<sup>th</sup> Respondent with the 1<sup>st</sup> Respondent Institute against the Petitioner, alleging that he had violated Regulation 6.2.3(7) of the Regulations (P24A). In response to the aforesaid complaint submitted by the 13<sup>th</sup> Respondent, the Petitioner, by a letter dated 08.08.2017 (P28), caused to explain the matter to the 2<sup>nd</sup> Respondent. In the said letter P28, the Petitioner had outlined his position, emphasizing that he consistently made reasonable and diligent inquiries to determine whether the 13<sup>th</sup> Respondent was engaged in the relevant project and whether all of his dues had been fully settled.

Thereafter, the Petitioner had also lodged a complaint against the 13<sup>th</sup> Respondent, stating that the 13<sup>th</sup> Respondent had lodged a false complaint against him with malicious intents. However, the 3<sup>rd</sup> Respondent, by his letter dated 05.02.2018(P38) had informed the Petitioner that no further action would be taken in this regard, in as much as it relates to the purported complaint already made by the 13<sup>th</sup>

Respondent. Thereafter the 3<sup>rd</sup> Respondent, by his letter dated 07.02.2018(P39), had informed the Petitioner that the Investigating Committee, which comprised the 9<sup>th</sup> and 10<sup>th</sup> Respondents, had concluded that there is a *prima facie* case of professional misconduct made out against the Petitioner, as envisaged in Regulation 6.2.3(5) of the Regulations and that the Council has decided to refer this matter to a Disciplinary Committee. Accordingly, a charge sheet (P41) had been served on the Petitioner.

The Petitioner contends that the Investigating Committee has failed to satisfy the mandatory preconditions set out in Sections 8(4A)(c) of the Sri Lanka Institute of Architects Law No.01 of 1976, and the facts and the circumstances of the case do not warrant or justify the issuance of the purported charge sheet against the Petitioner. Accordingly, the Petitioner seeks *inter alia* in the nature of the Writs of Certiorari:

- a. quashing the decision of the 1<sup>st</sup> to 9<sup>th</sup> Respondents to refer the complaint of the 13<sup>th</sup> Respondent to the Investigating Committee;
- b. quashing the decision directing the Disciplinary Committee to proceed with disciplinary proceedings against the Petitioner;
- c. quashing the report of the Investigating Committee of the 1<sup>st</sup> Respondent;
- d. quashing the decision reflected in the letter P39;
- e. quashing the decision reflected in the letter P38 informing that the complaint lodged by the Petitioner will not be proceeded with;
- f. quashing the charge sheet issued to the Petitioner(P41);
- g. quashing the decision directing the Disciplinary Committee to proceed with filing disciplinary action against the Petitioner; and

in the nature of Writs of Prohibition:

- h. restraining the 1<sup>st</sup>, 3<sup>rd</sup>, 11<sup>th</sup> and 12<sup>th</sup> Respondents from commencing further proceedings with a disciplinary inquiry against the Petitioner;
- i. restraining the 3<sup>rd</sup>, 11<sup>th</sup> and 12<sup>th</sup> Respondents from issuing any report containing any findings against the Petitioner; and

- j. restraining the 1<sup>st</sup>, 2<sup>nd</sup> to 9<sup>th</sup> Respondents from taking any adverse decision against the Petitioner.

### **Failure to Comply with the Mandatory Provisions under the Regulations by the Respondents**

The main contention of the Petitioner is that there is a blatant violation of the mandatory procedure set out in the Regulations and the Statute by the relevant Respondents in conducting themselves against the Petitioner. The matter in issue has arisen following an allegation of misconduct made by the 13<sup>th</sup> Respondent against the Petitioner to the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent Institution is a body incorporated by Law No. 1 of 1976, the Sri Lanka Institute of Architects Law (hereinafter sometimes referred to as “the Act”), which has been amended several times. Section 8(4A) of the Act, as amended by Act No. 14 of 1996, sets out the procedure to be followed where there is an allegation of misconduct against a member of the 1<sup>st</sup> Respondent Institute. The Section 8(4A)(a) is as follows:

*“Where an allegation of professional misconduct is made against a member or an Architect or an Architectural Licentiate, who is not a member, the Council may appoint an Investigating Committee to inquire into, and report to the Council, whether a prima facie case of professional misconduct has been made out against such member, Architect or Architectural Licentiate as the case may be.”*

Although Section 8(4A) of the Act sets out the procedure to be adopted in the instance where an allegation of professional misconduct is made against a member, the Regulations (P37A) enacted by virtue of the powers vested upon the Council in terms of Sections 6(1) and 6(2) read with Sections 3,4,7 and 9 of the Act provide further directions and clarifications to provisions in the Act. Regulation 9 of these Regulations, which outlines the procedure for conducting Disciplinary Inquiries, requires compliance with several mandatory prerequisites by the Council before any information or complaint received by the Council is referred to the Investigation Committee. Said Regulation 9 is as follows:

9. (1) ...

(2) *On receipt of such information or complaint, Institute shall adhere to the procedure hereinafter set out.*

(3) *The Honorary Secretary or President shall refer the same to the Council immediately.*

(4) *The Council shall take the matter up at the immediate Council meeting and study the information or complaint, and if determined **sufficient to investigate**, the information or complaint shall immediately be referred to the Investigation Committee for investigation and report to Council.*

It is important to observe that when a statute or subordinate legislation confers a blanket power on the administration to order an investigation without any restrictions or limitations, then such a power shall be subjected only to the general principles of administrative law regulating the exercise of the discretionary power. Nevertheless, in the given instance, use of the words “*study the information or complaint, and if determined sufficient to investigate*” indicates that the general power of the authority so granted upon the Council is subjected to fulfilment of certain conditions. Where the statute specifies, in somewhat definite terms, the circumstances upon which an inquiry can be ordered, it is lawful for this Court to quash an inquiry on the grounds that the authority has failed to comply with such specifications or has failed to exercise its discretion in a just manner.

The Petitioner asserts that the 1<sup>st</sup> to 12<sup>th</sup> Respondents have failed to demonstrate as to how the said Respondents have complied with the mandatory requirement stipulated in the Regulation 9(4). The Petitioner argues that although the 1<sup>st</sup> Respondent in its Statement of Objections avers that upon receiving the said complaint made by the 13<sup>th</sup> Respondent, the said complaint had been submitted to an Investigation Committee, the Statement of Objections of the 1<sup>st</sup> Respondent does not reveal as to how any objective assessment of the purported complaint had been conducted prior to referring the same to the Investigating Committee. However, the Statement of Objections filed by the 2<sup>nd</sup> to 9<sup>th</sup> Respondents provides that the Council had considered the contents of the complaint and referred it to the Investigation Committee. No other materials (such as any minutes of the Council) have been placed before

the Court to determine as to whether the conclusion arrived upon by the Council to refer the matter to the Investigating Committee was arrived at pursuant of studying the information or complaint and after determining that it is a matter sufficient to be investigated. I am of the view that strict compliance with the Regulations is required, as such a decision may have the consequences of severely affecting the livelihood of an Architect. Because, such investigation and inquiry based on professional misconduct may even lead to disenrollment of membership of an Architect as per the provisions under the Act.

Accordingly, although the determination to be carried out by the Council as per Regulation 9(4) is merely a preliminary step of assessment, even before investigating whether there is a prima facie case of professional misconduct, the word 'sufficient' in the Regulation demands some sort of assessment of the complaint. Hence, the Court takes the view that the Council has failed to satisfy this Court that there was adequate compliance with the mandatory provisions of Regulation 9(4).

The Petitioner also claims that the relevant Respondents have failed to satisfy the Court that the mandatory requirement under the Sri Lanka Institute of Architects Law (Act) has been complied with. Sections 8(4A)(c) of the Act pertaining to the Petitioner's allegation are reproduced as follows:

*“(c) Where an Investigating Committee appointed under paragraph (a) reports to the Council that a prima facie case of misconduct has been made against such member, Architect, or Architectural Licentiate, as the case may be, and that-*

*(i) the misconduct is of a trivial nature, the Council shall, after affording such member, Architect or Architectural Licentiate, as the case may be, an opportunity of being heard and unless such member, Architect or Architectural Licentiate requests that the matter be referred to a Disciplinary Committee, reprimand him if he is a member or refer the matter to the Architects Registration Board, if he is an Architect or Architectural Licentiate; or*



- (ii) *the misconduct is of a grave nature, the Council shall appoint a Disciplinary Committee to inquire into and report to the Council on the alleged misconduct.”*

The relevant procedure which should be adopted in proceeding with a disciplinary inquiry discussed in Section 8(4A) is further elaborated under Regulations (P37A) made under the authority derived from Section 6 of the Act. The Regulations mandate the Investigation Committee to submit a confidential report to the Council. Regulation No.9.1(6) of the Regulations P37A provides that:

*“The Investigation Committee shall submit a Report containing the procedure adopted, its findings and other relevant information, in the form of a written report to the Council in a confidential manner. All the necessary documents and correspondences shall be annexed to the said report.”*

Section 8(4A)(c) of the Act provides that once an Investigating Committee reports to the Council that a *prima facie* case of misconduct has been made, and the purported misconduct is of a trivial or grave nature, subsequent decisions could be made by the Council accordingly. The Petitioner asserts that the Respondent Council has not demonstrated to the Court whether the Investigating Committee has reported to the Council that a *prima facie* case of misconduct has been made and/or that the purported misconduct is of a “trivial” or “grave” nature. The Petitioner submits that the above-referred are statutory precedent conditions which have to be mandatorily satisfied. Hence, the Petitioner contends that in the event where the 2<sup>nd</sup> to 9<sup>th</sup> Respondents fail to satisfy that a *prima facie* case of misconduct against the Petitioner has been made or that the purported misconduct is of a trivial or grave nature, all subsequent directions made by the Council are vitiated, tainted, and rendered *ex facie* illegal.

The 3<sup>rd</sup> Respondent, by his letter marked P39, informed the Petitioner that the Investigating Committee had come to the conclusion that there is a *prima facie* case of professional misconduct. Accordingly, the Council has decided to refer the matter to a Disciplinary Inquiry Committee for further action. The Petitioner contended that the aforementioned letter does not adequately convey the nature or severity of the alleged professional misconduct against him that supports the conclusion of a *prima facie* case. Even in the letter marked P40, sent by the 3<sup>rd</sup>

Respondent to the Petitioner, does not reveal that the Investigating Committee has come to any findings of misconduct of grave nature.

The 1<sup>st</sup> to 12<sup>th</sup> Respondents submit that Section 8 of the Act does not place any obligation on the Council to inform the Petitioner of the nature of the *prima facie* case. It is claimed that however, letter marked P39 is a clear indication in respect of the *prima facie* case found against the Petitioner. However, I am not inclined to accept such an argument as the decisions made by the Council under Section 8(4A)(c) of the Act are also subject to a right of appeal under Section 8(6)(a) of the Act. In an event where a particular decision is subject to a right to appeal, clear and specific determinations of the decision subject right to appeal should be informed to the party affected in order for such party decide upon as to whether he/she shall avail such right and if availed on what grounds.

Regulation No.9.1(7)(a) of Regulations P37A provides that the confidential report, which has to be submitted by the Investigating Committee, shall contain a draft charge or charges and the basis of evidence supporting such charges, if disciplinary action is recommended. Further the Regulation 9.3.2(1)(a) of the Regulations P37A specifies that the preparation of a charge sheet is a duty of the Investigating Committee. Nevertheless, in the instant application, the charge sheet marked P41 annexed to the letter marked P40 has been prepared by the Disciplinary Committee, but not the Investigating Committee as statutorily required. Hence, the inference that this Court could reach is that the Investigating Committee had not made any determination as to the nature of the misconduct, whether it is trivial or grave in compliance with the statutory provisions.

Since the 2<sup>nd</sup> to 9<sup>th</sup> Respondents claim that they have fully complied with the requirement set out in Section 8(4) of the Act, the burden lies with the Respondent to satisfy this Court that the Respondents have complied with such requirements. It is apparent that the most prudent way to discharge such a burden of proof is for the Respondent to make available the alleged confidential report for the perusal of the Court. The Petitioner submits that the relevant Respondents have failed to produce any minutes of the Council or any such report of the Investigating Committee before the Court, which is important for this Court to determine as to whether the due procedure and the legal requirements have been satisfied by the relevant Respondents. The 2<sup>nd</sup> to 9<sup>th</sup> Respondents assert

that the Report of the Investigating Committee is confidential and has not been submitted to the Court, as producing it would make the report accessible to non-members and the public. Although the said Respondents state that the Report of the Investigating Committee is confidential, in terms of the provisions of Section 8(6)(a) of the Act, such a report is subject to a right of appeal. Therefore, it is clear that the legislature intended such a report to be accessible to the party being investigated. Hence, I am of the view that such a report cannot be deemed to be a privileged document, which the Petitioner or this Court could not have had access to.

However, the Regulations P37A makes such report of the Investigating Committee a confidential report, thus creating an apparent inconsistency between primary legislation and the subordinate legislation. It is not my place to review this inconsistency in the instant application, because none of the parties have raised any issues to this effect. Therefore, I shall leave it as a mere observation made in the course of analysing the law in question.

I am of the view that the 2<sup>nd</sup> to 9<sup>th</sup> Respondents had the opportunity to submit said Confidential Report to the Court at least under confidential cover without giving access to any third party. If so, the Court would have had the opportunity to assess the contents of the alleged confidential report and consider whether the relevant Respondents have complied with the applicable laws and regulations. However, the 2<sup>nd</sup> to 12<sup>th</sup> Respondents have failed to produce the alleged confidential report, which is said to be only accessible by the 2<sup>nd</sup> to 9<sup>th</sup> Respondents (Council). Since the Respondents themselves have created a gap in the evidence, this Court cannot determine whether the Investigating Committee has reached a decision in respect of the severity of the misconduct or the nature of such conduct (whether it is trivial or grave). In those circumstances, the Respondents should not be allowed to take any undue advantage upon their failure that would cause prejudice to the Petitioner. Additionally, if the Court decides to determine the matter based on the unseen confidential report, which is deemed the only relevant evidence, it would constitute an unwarranted inference by law.

Further, the Court is mindful of Section 114(f) of the Evidence Ordinance, which provides that the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the

person who withholds it. In the case of **Hemathilake Vs. Allina And Others (2003) 2 SLR 144** at **147**, it was held as follows:

*“What section 114 of the Evidence Ordinance provides for is the common sense advice that court may from a proved fact infer another fact which it thinks is likely to be true regard being had to human conduct and the common course of natural events. The particular facts of each case must be carefully considered before any inference is drawn under section 114 of the Evidence Ordinance.”*

Further, in the case of **Leelawathie And Others Vs. Makewita (2019)1SLR 271** at **281**, it was opined that:

*“For the presumption under Section 114(f) of the Evidence Ordinance to arise, the evidence must not be available or is withheld by the opposite party. The presumption will not arise if it is available within the control of the party who wishes to lead that evidence. In other words, no inference can be drawn where the witness in question is equally available to both, particularly when he is actually in Court.*

In view of the rationale upheld in the above-cited cases, this is a clear case where the presumption under Section 114(f) of the Evidence Ordinance could be applied, especially, in the backdrop where the Petitioner has no access to the said confidential report.

It is on common grounds that the above relevant provisions of the Act and the Regulations specified in Regulations P37A are mandatory. Since these disciplinary procedures may even possibly finally lead to the disenrollment of a member from the professional organisation, it is essential that the 2<sup>nd</sup> to 9<sup>th</sup> Respondents strictly comply with relevant statutory provisions and the Regulations. However, as discussed above, I am of the view that the Respondents have failed to satisfy this Court as to the due compliance with procedure laid down under the Statute and the Regulations.

### **Whether the Application of the Petitioner is Premature**

The 1<sup>st</sup> to 12<sup>th</sup> Respondents argue that the Petitioner's application challenging the Investigating Committee's proceedings is premature. The Respondents contend that the report produced by the Investigating

Committee is intended solely for the Council to determine whether a Disciplinary Committee should be appointed or not. Therefore, the Respondents submit that the Report of the Investigating Committee does not have any impact upon the rights of the Petitioner. Hence, it is the stance of the Respondent that the instant application, which has been preferred to this Court prior to any decision by the Disciplinary Committee, is premature.

However, it is observed that the impugned disciplinary procedure takes place in several steps/stages rather than as a single inquiry. Section 8(6)(a) of the Act, which manifests the multiple stages of the disciplinary inquiry, read as follows:

*“The member or Architect or Architectural Licentiate in respect of whom a Disciplinary Committee or Investigating Committee has made such a report may appeal against such report or the decision of the Council or of the Architects Registration Board, consequent upon such report, to the Court of Appeal.”* [emphasis added]

Accordingly, in the given instance where the impugned disciplinary procedure takes place in stages, I am of the view that the Petitioner has the right to challenge such decisions at the earliest stage rather than the final and decisive stage.

In the case of **Sunethra Rupasinghe Vs. D.S.K. Pushpakumara (CA Writ 627/2021, CA Minutes dated 08.06.2022)**, this Court assessed whether the conduct of the Petitioner was reasonable and addressed the delay in filing the application for judicial review. The Court specifically referring to paragraphs 9-17 of ***"Judicial Remedies & Public Law"* (4th edition)**, where **Lewis** provides relevant insights on the matter and came to the following conclusion.

*“The claimant should challenge the decision which brings about the legal situation of which complaint is made. There are occasions when a claimant does not challenge that decision but waits until some consequential or ancillary decision is taken and then challenges that later decision on the ground that the earlier decision is unlawful. If the substance of the dispute relates to the lawfulness of that earlier decision and if it is that earlier decision which is, in reality, determinative of the legal position and the later decision does not, in fact, produce any change in the legal position,*

*then the courts may rule that the time-limit runs from that earlier decision.”*

In the case of **K.G.D. Walter Abeysondera and another Vs. S. Hettiarachchi, Secretary, Ministry of Tourism and Other, (CA/Writ/371/2021)** decided on **22.09.2021**) also this Court was of the view that, in instances where the impugned action takes place in stages, the Petitioner has a right to challenge such decision at the earliest stage rather than waiting for the final and decisive stage.

In the light of the above, I am not inclined to accept the contention of the 1<sup>st</sup> to 12<sup>th</sup> Respondents that the Petitioner’s application challenging the report and proceedings of the Investigating Committee are premature.

### **Availability of an Alternative Remedy**

The 1<sup>st</sup> to 12<sup>th</sup> Respondents have asserted that the writ jurisdiction of this Court should not be invoked in the instant application, as the law provides the Petitioner with an adequate statutory alternative remedy under the Act. The Respondents rely on Section 8 of the Act, which provides the right of appeal against the report or decision of the Council, Disciplinary Committee and the Investigating Committee. The writ jurisdiction, being a discretionary remedy, the Court will not normally exercise it unless and until the Petitioner has exhausted other remedies reasonably available and equally appropriate. However, in the instant application, the relevant Respondents were reluctant to submit the impugned report of the Investigating Committee even for the perusal of this Court on the basis that it is a confidential one which could not be revealed or accessed by non-members of the 1<sup>st</sup> Respondent Institute and the public. The attitude of the 1<sup>st</sup> to 12<sup>th</sup> Respondents effectively precludes the Petitioner from “reasonably” exercising his right of appeal as mandated by the Statute. The conduct of the 1<sup>st</sup> to 12<sup>th</sup> Respondents creates significant challenges for the Petitioner to resort to the so-called alternative remedy suggested by the Respondents. Accordingly, given the specific circumstances of this application, I view that in the given instance, the Petitioner cannot be reasonably expected to resort to the aforesaid alternative remedy.

The facts related to the alleged misconduct of the Petitioner was not contested by the parties at length during the course of the argument and their submissions were limited to the aforesaid procedural impropriety.

Having observed the existence of a clear procedural defect in arriving at the decision in question, I see no reason to delve into the factual intricacies of the alleged misconduct.

### **Conclusion**

In the above premise, I am inclined to grant the reliefs (B) to (M) prayed for in prayer of the Petition of the Petitioner. However, this Court observes that this decision will not debar the 1<sup>st</sup> Respondent from conducting a fresh inquiry into the impugned complaint made by the 13<sup>th</sup> Respondent complying with the applicable procedure set out in the Statute and the Regulations, and take appropriate decision.

**Judge of the Court of Appeal**