

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 Article 140
of the Constitution.

1. Parana Palliya Guruge Roshan,
No. 318/8, Beliatta Road,
Thangalle.
2. Maddumage Supriya Dinesh,
No. 304, Madura, Sarvodaya Mawatha,
Wijayasiripura, Walasmulla.

PETITIONERS

Court of Appeal Case No:
CA/WRIT/0039/2025

Vs.

1. Gunasekara,
Investigation Officer,
Secret Intelligence Unit,
Commission to Investigate Allegations
of Bribery or Corruption,
No. 36, Malasekara Mawatha,
Colombo 07.
2. Officer-in-Charge,
Secret Intelligence Unit,
Commission to Investigate Allegations
of Bribery or Corruption,
No. 36, Malasekara Mawatha,
Colombo 07.

3. Commission to Investigate Allegations of Bribery or Corruption,
Office of the Bribery and Corruption Commission,
No. 36, Malasekara Mawatha,
Colombo 07.
4. Commissioner of Motor Traffic,
Elvitigala Mawatha, Narahenpita,
Colombo 05.
5. Hon. Attorney General,
The Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Shavindra Fernando, PC for the Petitioners.
Anusha Sammandapperuma, ADL for the 1st, 2nd and 3rd Respondents.
Shanil Kularatne, ASG, PC for the 4th and 5th Respondents.

Supported on: 13.02.2025

Order delivered on: 04.04.2025

Mayadunne Corea J

The Petitioner filed this Writ Application seeking, *inter alia*, the following reliefs:

- “(g) *Issue a mandate in the nature of a Writ of Prohibition, preventing the 1st Respondent (and/or the 2nd Respondent and/or his agents) from making any further Orders against the Petitioners in relation to the facts pertaining to this matter.*

- (h) *Issue a mandate in the nature of a Writ of Prohibition, preventing the 1st Respondent (and/or the 2nd Respondent and/or his agents) from making any arrest on the Petitioners in relation to the facts pertaining to this matter.”*

The facts are briefly as follows. The Petitioners are Development Officers at the Hambantota branch of the Department of Motor Traffic and their role is to accept vehicle transfer applications. While the Petitioners were on leave on or about 09.05.2025, the 1st Respondent (and/or the 2nd Respondent and/or his agents) visited the Department of Motor Traffic to record statements from the Petitioners in relation to a vehicle transfer performed by the Petitioners. The Petitioners allege that the Respondents had informed the officers of the Department of Motor Traffic that the Petitioners were required to be present on the following morning or that they may be subjected to an arrest. The Respondents had paid a second visit on the following day. However, the Petitioners submitted that the Petitioners had not reported to work since 10.05.2025, due to the threat of an arrest and the possibility of an allegation that the Petitioners had tampered with evidence. It appears that the date mentioned throughout the Petition is incorrect and appears to be a typographic error as the Petition refers to a future date, which has not been corrected.

At the commencement of the arguments, the learned ASG appearing for the 4th and 5th Respondents submitted that he would associate himself with the submissions of the learned Counsel appearing for the 1st 2nd and 3rd Respondents.

The Petitioner’s contention

The Petitioners state that the conduct of the Respondents impedes the ability of the Petitioners to carry out their work effectively and that the Petitioners have a legitimate expectation to be able to perform their duties in a peaceful and undisturbed manner. Further, the Petitioners contend that the 1st Respondent (and/or the 2nd Respondent and/or his agents) failed to follow the proper procedure in investigating the Petitioners. It is argued that the Respondents should have informed the Petitioners of the subject matter of the investigation and provided notice to the Petitioners to be present at the Commission by specifying the date and time. Further, the Petitioners contend that the Respondents have acted contrary to the provisions of the Anti-Corruption Act, No. 09 of 2023 and in excess of jurisdiction.

The Respondent's contention

The Respondents raised the following objections:

- Court of Appeal does not have jurisdiction to determine matters in relation to the Commission to Investigate Allegations of Bribery or Corruption
- Futility
- Petitioners do not have locus standi
- Lack of uberrima fides

Analysis

When this matter was supported the learned Counsel appearing for the 1st, 2nd and 3rd Respondents raised a preliminary objection on the jurisdiction of the Court to hear and determine this Application and the futility in confining the argument to the two investigating officers. It was submitted that even if a Writ is issued against the 1st and 2nd Respondents, still the 3rd Respondent can carry out the investigation by assigning two other officers. At the commencement of the submissions, both Counsel was in agreement to invite the Court to determine the preliminary issue on jurisdiction first. Accordingly, the learned President's Counsel appearing for the Petitioners and the learned Counsel appearing for the Respondents addressed this Court on the issue of jurisdiction. The learned Counsel for the Respondents contend that the Writ Application has made the Commission to Investigate Allegations of Bribery or Corruption (hereinafter referred to as "CIABOC") the 3rd Respondent and the 1st and 2nd Respondents are officers of the 3rd Respondent. It is the contention of the learned Counsel appearing for the Respondents that the 1st and 2nd Respondents are the assigned officers to handle the case. Thus the 1st and the 2nd Respondents are officers through the CIABOC discharge its statutory duties. Further, it was contended that it was the reason for learned the Counsel appearing for the CIABOC to defend their action.

The parties were not at variance and the Petitioners conceded that they are not challenging the commencement or the continuation of the investigation. Also, that the Writ jurisdiction against the CIABOC is not with the Court of Appeal. However, it is their contention that their complaint is limited to the actions of the two Respondents, and the way they are conducting the investigation. Thus, it is contended that the actions of the two Respondents are not excluded from the Writ jurisdiction of the Court of Appeal.

At this stage, the Court will advert to consider the submissions of the Petitioners. The Petitioners concede that under section 160 of the Anti-Corruption Act, the Writ jurisdiction against the Commission is vested with the Supreme Court. However, they contend that in this Application they are not seeking to invoke the Writ jurisdiction of the Court of Appeal against the Commission. It is further contended that they are not challenging the acts of the Commission. It is their submission that what they are challenging are the alleged arbitrary acts of the 1st and 2nd Respondents. It is further contended that the Anti-Corruption Act does not contemplate a situation where the acts of the officers of CIABOC should also be challenged in the Supreme Court. It is further contended that the exclusion of the Writ jurisdiction of the Court of Appeal under section 160 of the Anti-Corruption Act does not extend to the officers of the CIABOC but extends only to the Commission. They further submit that the Commission consists of three Commissioners under section 4 of the Anti-Corruption Act.

The learned President's Counsel appearing for the Petitioners further argues that by this Writ Application the Petitioners are not challenging the initiative to investigate. It is also contended that the Petitioners by this Writ Application are not challenging the commencement or continuation of this investigation and they concede that all acts committed under the Act by the Commission are excluded from the jurisdiction of the Court of Appeal.

It is the Petitioners' contention that though they are not challenging that the 1st and 2nd Respondents are authorized officers; it is argued that the conduct of investigators attracts the jurisdiction of the Court of Appeal under Article 140 of the Constitution. However, the Petitioners are only challenging the alleged acts of the two investigating officers. Hence, it is contended that the bar imposed by section 160 will not be attracted to the case before this Court and the Petitioners can maintain this Application. To substantiate his argument, the learned President's Counsel appearing for the Petitioners contends that the 1st and 2nd Respondents are officers who are attached to the Sri Lanka Police Department and are now attached to the 3rd Respondent and therefore, he strenuously argues that their actions are amenable to the Writ jurisdiction.

In essence, the Petitioners' reply to the preliminary objection is that the Writ jurisdiction of the Court of Appeal is ousted under section 160 of the Anti-Corruption Act only if the relief is sought against the Commission per se and not against the officers of the Commission, namely the 1st and 2nd Respondents. With this in mind, let me now consider the provisions of the Anti-Corruption Act.

The Petitioners at no time challenges the acts of the Commission as in their arguments they have conceded that the Writ jurisdiction is ousted in challenging the acts of the Commission.

The learned Counsel appearing for the Respondents submitted that the 1st and 2nd Respondents are part of the CIABOC, namely the 3rd Respondent. The 1st Respondent is an investigation officer of the Secret Intelligence Unit of the Commission and the 2nd Respondent is the Officer-in-Charge of the Secret Intelligence Unit of the Commission. And, it was contended that their actions were authorized actions of the Commission and therefore, the learned Counsel for the Commission is appearing to defend them. To get a better understanding of the issue before this Court, this Court will now consider the long title of the Anti-Corruption Act, No. 09 of 2023. The long title states as follows:

“AN ACT TO GIVE EFFECT TO CERTAIN PROVISIONS OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION AND OTHER INTERNATIONALLY RECOGNIZED NORMS, STANDARDS, AND BEST PRACTICES; TO PROVIDE FOR THE ESTABLISHMENT OF AN INDEPENDENT COMMISSION TO DETECT AND INVESTIGATE ALLEGATIONS OF BRIBERY, CORRUPTION AND OFFENCES RELATED TO THE DECLARATION OF ASSETS AND LIABILITIES AND ASSOCIATED OFFENCES, AND TO DIRECT THE INSTITUTION OF AND INSTITUTE PROSECUTIONS FOR OFFENCES OF BRIBERY, CORRUPTION AND OFFENCES RELATED TO THE DECLARATION OF ASSETS AND LIABILITIES AND OTHER ASSOCIATED OFFENCES; TO PROMOTE AND ADVANCE THE PREVENTION OF CORRUPT PRACTICES; TO EDUCATE AND RAISE AWARENESS AMONGST THE PUBLIC TO COMBAT CORRUPTION; TO REPEAL THE BRIBERY ACT (CHAPTER 26), THE COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION ACT, NO. 19 OF 1994 AND THE DECLARATION OF ASSETS AND LIABILITIES LAW NO. 1 OF 1975 AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.”

As per the long title it is amply clear the power to investigate allegations of bribery and corruption and offences related to the declaration of assets and liabilities and other associated offences are vested with the CIABOC.

It is submitted that in carrying out the objectives stipulated under section 2, the Commission is established under section 3. The said section states as follows:

“3(1) There shall be established, for the purpose of this Act, a Commission which shall be called and known as the Commission to Investigate Allegations of Bribery and Corruption or Corruption (herein referred to as the “Commission”).”

The above said section gives the Commission a legal personality where subsection (2) reads as follows:

“(2) The Commission shall, by name assigned to it by Subsection (1), be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.”

Hence the 3rd Respondent is a creature of a Statute with perpetual succession. Subsection (3) empowers the Commission to direct investigations as it is vested with the powers to accomplish the objects of the Anti-Corruption Act.

Under section 42, it is the Commission that is empowered to commence and conduct a preliminary inquiry.

Under section 26 of the Anti-Corruption Act, especially under section 26(1), the Commission has the power to carry out this investigation through the officers and employees appointed to the Commission.

“26. (1) The Commission may subject to the rules made under this Act appoint such other officers and employees as it may deem necessary for the efficient discharge of its functions.”

Further the Commission is empowered to obtain the services of other officers through fixed term contracts pursuant to section 27 of the Act.

Hence, it is clear that the efficient discharge of the functions of the Commission is carried out by the appointed employees of the Commission. Hence, the investigating power of the Commission is discharged through its officers and employees under section 26. The learned Counsel appearing for the 1st, 2nd and 3rd Respondents contended that the 1st and the 2nd Respondents are carrying on the investigations pursuant to the powers vested under the Anti-Corruption Act.

This Court observes that as per the Petitioners’ submissions, the Commission consists of three Commissioners and the reference to “commission” should be attributed only to the three Commissioners. If this Court is to give such a narrow interpretation, all investigations will have to be conducted by the three Commissioners. This would result in absurdity.

It is contended that contrary to the learned President's Counsel's argument that pursuant to section 32(1) the Commission gives appointment letters to all its officers and they become officers of the Commission.

This Court observes that Chapter IV deals with the powers and functions of the Commission to appoint, promote, take disciplinary control and pertaining to the dismissal of employees of the Commission. Hence, it is clear that the Commission pursuant to section 32 is empowered to take disciplinary action against any officer. Thus, if the Petitioners are alleging misdeeds or acts of *ultra vires* in conducting the investigation by the 1st and 2nd Respondents, they should complain to the 3rd Respondent. In this case, the Court is not privy to any document by which the Petitioners have complained to the 3rd Respondent against the alleged unlawful acts of the 1st and 2nd Respondents before filing the Writ Application. It is pertinent to note the Petitioners' whole contention is that the 1st and 2nd Respondents are acting *ultra vires* of their powers, hence, there is no requirement to make any allegation against the 3rd Respondent. If that is so the Petitioners should have first complained to the 3rd Respondent against the alleged acts of the 1st and 2nd Respondents. Further as per the Petitioners' contention if the 1st and 2nd Respondents are acting without the authority of the 3rd Respondent then the Petitioners have failed to give an explanation and plead as to why they have failed to complain to the 3rd Respondent against the acts of the 1st and 2nd Respondents.

It is also pertinent to note that as per paragraph 2(c) of the Petition, the Petitioners concedes that the 1st and 2nd Respondents are officers attached to the Commission and goes on to say that "*the Commission is a body corporate that may sue and be sued in such name*". Nevertheless, the Petitioners further state that they are not seeking any reliefs against the 3rd Respondent. However, the Petitioners have failed to explain the reason as to why the 3rd Respondent was made a party to this action, if the allegation is only pertaining to the 1st and 2nd Respondents, and especially if the said Respondents are acting independent of the Commission.

In the limited objections filed by the 1st, 2nd and 3rd Respondents, the Director General of the Commission affirms that the 1st and 2nd Respondents are conducting the said investigations pursuant to the approval of the Commission. It is not disputed that the 3rd Respondent is, pursuant to Article 156A (1) of the 21st Amendment to the Constitution read with section 4 of the Anti-Corruption Act, is the sole body to investigate bribery and corruption and is empowered to authorize arrests and prosecutions and the said power is carried out by the officers of the Commission. As per the scheme of the Act, it is through the officers and the employees of the Commission that the Commission efficiently discharges its functions.

However, it is also contended by the learned Counsel appearing for the 1st, 2nd and 3rd Respondents that the decisions pertaining to arrests or prosecutions are taken not by the said officers, acting on their own accord, but acting as the officers and employees of the Commission with its authorization. Hence, the Respondents contend that the Petitioners' allegation that the 1st and 2nd Respondents acting *ultra vires* of their powers were attempting to arrest the 1st and 2nd Petitioners is not tenable. It is further contended that in such a situation, the allegations should be against the 3rd Respondent who is not amenable to the Writ jurisdiction of the Court.

In the case of ***Commission to Investigate Bribery or Corruption v. Maldeniyage Don Upali Gunarathne Perera and others*** CA/CPA 77/2022 decided on 04.04.2023 it was held that:

“... the decisions of the Commission cannot be questioned by any entity except by the proper action at the proper forum. Such proper action is indicated in section 24(1) of the Act which states that ‘the jurisdiction vested in the Court of Appeal by Article 140 of the Constitution shall, in respect of applications in which relief is sought against the Commission be exercised by the Supreme Court and not by the Court of Appeal.’”

Credibility of the allegation against 1st and 2nd Respondents.

It is also pertinent to observe that the entire allegation against the 1st and 2nd Respondents as pleaded in the Petition are of “hearsay nature”. The Court observes though the Petitioners allege that the conduct of the 1st and 2nd Respondents are outside the powers vested on them by the Anti-Corruption Act and that their acts will not attract section 160, the Petitioners have failed to establish this contention by independent evidence. In trying to demonstrate that the acts of the 1st and 2nd Respondents do not fall within the ouster clause of section 160, the Petitioners allege that the 1st and 2nd Respondents threatened the employees of the Department of Motor Traffic to request them to get down the 1st and 2nd Petitioners to give statements to the 1st and 2nd Respondents. However, none of these allegations are substantiated by independent evidence. There are no affidavits filed to substantiate this allegation.

It is also pertinent to note that as per the submissions to this Court the Commission has authorized the 1st and 2nd Respondents to commence an investigation. The Petitioners repeatedly submitted that they are not challenging the power of the Commission to commence investigations. Hence, it is clear that the investigations carried out by the 1st and 2nd Respondents are done by the Commission through the said Respondents. In our

view, the Petitioner by trying to obtain a Writ of Prohibition against the 1st and 2nd Respondents are attempting to achieve indirectly what they cannot achieve directly.

If we are to accede to the submissions of the Counsel for the Petitioner and issue a restraining order against the 1st and 2nd Respondents, who are authorized officers of the 3rd Respondents, the resulting position would be to curtail the investigation power of the 3rd Respondent by this Court which the legislature has intentionally excluded.

In coming to the said conclusion, this Court considered the effect the 3rd Respondent will have if we are to hold with the submissions of the learned President's Counsel appearing for the Petitioners. In doing so this Court also wishes to draw a parallel with what is contemplated in the Interpretation Ordinance, though it will have no effect in this instance. Section 24(2) of the Interpretation Ordinance contemplates a similar situation which would arise if the Court is inclined to accept the submissions of the Petitioners' Counsel. The legislature in its wisdom has provided for such a situation in subsection (2). It is to be noted that this Court considers this section merely for the purposes of a comparison. The said subsection reads as follows:

“(2) No court shall upon any ground whatsoever grant any injunction or make any order against a state officer, if the effect of the granting of such injunction or the making of such order would be, whether directly or indirectly, to restrain the State, a Minister or a Deputy Minister of any matter or thing.”

Hence, if we are to adhere to the submission of the learned President's Counsel for the Petitioners and hold that this Court will have jurisdiction to issue a prerogative Writ of Prohibition and restraining orders detaching the acts of the 1st and 2nd Respondents from the 3rd Respondent, this Court will indirectly restrain and impede the functions of the CIABOC in carrying out its statutory duties envisage under the Anti-Corruption Act and assume a jurisdiction that has been specifically excluded and vested with the Supreme Court.

With regard to actions against the Commission, and the powers of the Court of appeal, the Court of Appeal in *Maldeniyage Don Upali Gunarathne Perera and another v. Commission to Investigate Bribery or Corruption CA/CPA 85/2022 decided on 04.04.2023* held that:

“this Court is of the observation that pertaining to the forum chosen by the petitioners to address the defectiveness of the indictment, this Court lacks the jurisdiction to canvass such objections as per the law set out in a plethora of cases such as the following: Director General of Commission to Investigate

Allegations of Bribery or Corruption vs Lalith Kumara LTA 06 of 2016 dated 23.02.2022, B.A. Ranjan Somasinghe vs Director General of Commission to Investigate Allegations of Bribery or Corruption CPA 02/2022 dated 11.01.2022, D.M. Rohini Ekanayake vs Director General of Commission to Investigate Allegations of Bribery or Corruption CA PHC APN 76/21 dated 05.04.2022 and Amarawansa Abey Siri Munasinghe Vs Director General of Commission to Investigate Allegations of Bribery or Corruption CA-HCC 308/2019 dated 31.01.2023. *In the above instances, this Court has repeatedly established that an act of the Commission has to be challenged by way of writ application to the Supreme Court as mandated in section 24(1) of CIABOC Act.*”

Further, the Court of Appeal in ***Sujeewa Arjuna Senasinghe v. P.G.R. Sumendra and another*** CA Writ 40/2020 order delivered on 29.08.2024, held that:

“... the Writ jurisdiction vested in the Court of Appeal by Article 140 of the Constitution shall, in respect of applications which reliefs are sought against the Commission be exercised by the Supreme court and not by the Court of Appeal.”

In this instance the acts of the 1st and 2nd Respondents who are authorized officers of the 3rd Respondents cannot be restrained without having an effect on the investigation carried out by the 3rd Respondent. Hence, in our view, any challenge to the acts of the Commission has to be made to the Supreme Court. The Writ jurisdiction of the Court of Appeal is statutorily excluded. Therefore, the preliminary objection raised by the learned Counsel appearing for the 1st, 2nd and 3rd Respondents has to succeed. Accordingly, for the aforesaid reasons we refuse to issue formal notice and uphold the preliminary objections. We proceed to dismiss this Application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal