IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Chief Petty Officer Heeni Pellage
Harischandra (XC33823)
234/A, Alakanda, Palolpitiya,
Thihagoda, Matara.

PETITIONER

C.A. Case No. WRT/0487/21

Vs.

1. Vice Admiral Nishantha Ulugetenne,
   Commander – Sri Lanka Navy,
   Navy Headquarters,
   Colombo.

1A. Vice Admiral Priyantha Perera,
   Commander – Sri Lanka Navy,
   Navy Headquarters,
   Colombo.

2. Cdr. S. C. Annathugoda,
   Commanding Officer,
   Naval and Maritime Academy,
   Sri Lanka Navy Dockyard,
   Trincomalee.

3. Captain C.T. Gunarathne,
   SLNS Suranimala,
   Colombo Port, Malwatta Road,
   Colombo 01.

4. Lieutenant S. P. Y. D. A. Subasinghe,
   Naval and Maritime Academy,
   Sri Lanka Navy Dockyard,
   Trincomalee.

5. Major General (Rtd.) Kamal Gunaratne,
   The Secretary,
   Ministry of Defence,
   15/5, Baladaksha Mawatha,
   Colombo 03.

RESPONDENTS

BEFORE : K. M. G. H. KULATUNGA, J.

COUNSEL : Shantha Jayawardena with Nayantha Wijesundera, instructed by Dinesh De Silva, for the Petitioner.

Shemanthi Dunuwille, S.C., for the Respondents.

ARGUED ON : 26.09.2025

DECIDED ON : 02.10.2025

JUDGEMENT

K. M. G. H. KULATUNGA, J.

1. The petitioner is a sailor attached to the Sri Lanka Navy holding the rank of Chief Petty Officer as at now. The petitioner had been charged at a Summary Trial under the Navy Act, No. 34 of 1950, and had been found guilty. The Presiding Officer has recommended dismissal from the Navy without disgrace. This application is against the said finding

and the recommendation marked P-17. The petitioner is assailing the validity of the said inquiry and seeking a writ of *certiorari* to quash the said finding on the following grounds:

i. the failure to give reasons for the finding of guilt and convictions; and

ii. the Summary Trial was conducted in violation of the principles of natural justice and contrary to the procedure prescribed by the Sri Lanka Navy Order 0501 on "Boards of Inquiry and Summary Trials" (marked P-15).

Facts.

2. The petitioner has not annexed and produced the Inquiry Proceedings and/or the findings of the Summary Trial and has only produced document P-17, which is a message communicated within the Sri Lanka Navy in which certain information has been transmitted that a warrant of punishment against the petitioner had been read over to the him and also that the punishment indicated is "*dismissal from SLN without disgrace."* The petitioner prayed for the calling of the entire record of the summary trial. The respondents, along with the objections, tendered a true copy of the entire proceedings, marked R-2. These proceedings contain the charge preferred, the procedure followed, and the evidence led in its totality, and upon concluding the evidence of the respective parties, the submissions made by the Prosecuting Officer and the Defending Officer are also included therein.

3. Upon the conclusion of the Prosecuting Officer's address, the decision and opinion of the Presiding Officer of the Summary Trial is recorded. This is followed by the warrant of sentence. According to R-2, the Presiding Officer's determination and opinion merely contains three lines and is to the effect that he had considered the preliminary investigation report and the evidence and found that these have established that the accused (the petitioner) is guilty and he had been convicted thereon.

4. The sentence, according to the warrant, is "*dismissal from SLN without disgrace*." Accordingly, R-2 thus contains, in its totality, the proceedings of the Summary Trial held on 10.06.2021, which is referred to and reflected in P-17. The petitioner, by prayer *(c)*, is seeking a writ of *certiorari* to quash the entirety of the proceedings of the Summary Trial held on 10.06.2021. Then, by prayer *(d)*, he is seeking the quashing of the finding of guilt as reflected in P-17, and then, by prayer *(e),* he is seeking a writ of *certiorari* to quash the punishment imposed to dismiss the petitioner from the Sri Lanka Navy without disgrace as reflected in P-17. There are several other consequential remedies by way of writs of prohibition and *mandamus* sought by the petitioner.

5. At the outset, the learned State Counsel on behalf of the respondents did raise the preliminary objection that the punishment has already been approved by the President, and as such, this Court now has no jurisdiction in the sense that this matter is now futile. It is correct and stands to reason that when the process has moved and the recommended punishment is approved, this Court does not have jurisdiction to make any pronouncement or issue a writ in respect of the approval and the carrying out of the recommended punishment. To that extent, the petitioners, in the normal course, ought to have sought and obtained interim relief preventing the Commander of the Navy from transmitting the same to the President. However, in this instance, the matter had been forwarded to the President and been approved. I find that Superior Courts have entertained and proceeded to consider such applications even when the matter has been approved on the basis that if there be a finding in favour of the petitioner, there is a possibility of the President reconsidering his approval if some form of request is made. This was so held in ***Flying Officer Ratnayake vs. Commander of the Air Force and others*** [2008] 2 Sri L.R. 162, where his Lordship Sisira De Abrew, J. held as follows:

> *"Since Her Excellency the President has approved the withdrawal of the commission, it is futile to issue a writ of mandamus directing*

the respondents to hold a Court Martial afresh. This order does not prevent Her Excellency the President from reconsidering the withdrawal of the petitioner's commission, which was based on the reconsideration of the 1st respondent."

I observe that this line of thinking has been followed by Mahinda Samayawardhena, J., in ***S. A. R. S. P. Kumara vs. Vice Admiral J. S. K. Colombage, Commander of the Sri Lanka Navy and others*** (CA/Writ/178/2014, decided on 13.03.2020) and by S. U. B. Karalliyadde, J., in ***C. J. Ranasinghe vs. Commander of the Sri Lanka Navy and four others*** (CA/Writ/313/2021, decided on 06.12.2023). In these circumstances, notwithstanding the said preliminary objection, I would proceed to consider this application on its merits.

6. Before considering the legal issues, it is prudent and necessary to briefly appraise the facts that led to this Summary Trial. In June 2020, the petitioner, returning from leave, had been checked at the entrance to the Navy Camp in Trincomalee at about 8:30 – 9:00 PM. When his bag was searched, it is alleged that a tiny piece of paper was seen or found fallen out of his bag. This when examined, was found to be containing cannabis wrapped in a small piece of paper, the amount being 180 milligrammes. The charges preferred against him at the Summary Trial was the possession of this quantity of cannabis. Upon leading of evidence, especially that of the sentry and another sailor who happened to be present and that of the petitioner's evidence, the Presiding Officer had found the petitioner guilty as charged.

7. The proceedings and the findings are tendered along with the objections marked R-2, according to which the inquiry had been conducted on a charge under Section 104 (1) of the Navy Act for bringing 180 milligrammes of cannabis to the Navy Camp. Upon leading the evidence of the prosecution, the rights of the accused officer had been explained, and the petitioner had opted to place his position by way of an unsworn

written statement. Upon hearing the submissions of both parties, the Presiding Officer has pronounced his decision, which is recorded in four lines as follows (*vide* P-17):

> "**<u>උසාවියේ මතය හා විනිශ්චය</u>**
>
> 2020 අගෝස්තු මස 26 වන දිනැති අංක ඒපීඑම් (ඊ) / අයිඑන්වී / 32 /2020 දරණ මූලික විමර්ෂණ වාර්ථාව සහ ලැබී ඇති සාක්ෂි සැලකිල්ලට ගනිමින් මොහු වරදකරු බවට ඔප්පු කර ඇති බැවින් චිත්තිකරු වරදකරු බවට ගරු උසාවිය විසින් තීරණය කරන ලදි.

Thereafter, the aforesaid sentence and punishment had been imposed.

8. The primary ground on which this decision is assailed is based on the procedural irregularities. The established procedure to conduct a Summary Trial, as provided for by the Sri Lanka Navy Order 0504 (R-3), is of significance and is important. It is clear that rules of natural justice is required to be followed as provided for by Order 05, which reads as follows:

> *"05. All officers exercising judicial powers are required to draw their attention to the following facts, including rules of natural justice, when exercising their powers.*
>
> *a. Every accused person is presumed to be innocent until the contrary is proved. Therefore the burden of proving the guilt of any accused is vested on the prosecution.*
> *b. The prosecution shall prove the case beyond reasonable doubt.*
> *c. The charge shall be framed under the appropriate penal section of the Navy Act.*
> *d. If there is a specific section in the Navy Act making provisions to punish for an offence, a charge shall not be framed regarding such offence under section 104 (1) of the Navy Act. Resorting to section 104 (1) shall only be in cases where there is no specific section for such offence.*
> *e. Two or more charges shall not be framed based on the same facts. If two or more charges were to be framed on the same*

facts such charges shall be alternative and if convicted conviction shall only be for one charge.

f. The charge sheet shall be served on the accused giving sufficient time for him to prepare for his defence.

g. Every accused shall have the right to be defended by a defending office. Every possible step to be taken by the Commanding Officers to provide the services of a defending officer at the will of the accused, subject to service exigencies."

9. For all purposes, it is clear that the procedure required to be followed and prescribed is akin to that of a normal criminal trial under the Code of Criminal Procedure Act. The accused is presumed to be innocent, and proof beyond a reasonable doubt is required. Further procedural steps are provided for by Order 06. The relevant procedural step in this context is item (n), which specifically provides as follows:

> *"**Finding of the Court.** The Court shall, arrive at the finding, **indicating reasons**, based only upon the evidence led before the court to warrant the finding."*

It is clearly required that the upon the Summary Trial, the Court is required to arrive at a finding indicating reasons. This requires and contemplates the findings, which contain reasons for the same. Then, it is also provided that such findings should be based only upon the evidence led before the Court. However, on a perusal of R-2, it is apparent and clear that the said requirements have been followed in the breach. I would emphasise and elaborate that though there is a specific requirement of indicating reasons, the finding and the conclusion is just three lines. It merely says that upon considering the evidence, as the accused is proved to have committed the offence, he is found guilty. There is an absolute absence of any reasons to start with. These proceedings require that the allegations be proved beyond reasonable doubt.

10. In such circumstances, the Presiding Officer, in the least, is statutorily required to indicate and give reasons as to why he finds the charges to be proved. In the current application, the prosecution has led evidence to establish that the substance was found in the possession of the accused. As opposed to that, the accused has denied being in possession and also suggested that this may be an introduction. What is important is that a person entrusted with the trying of the accused, both on facts and law, should advert and consider the evidence and formulate his opinion. In the present context, these also entailed the evaluation of the position put forward by the accused person. According to item 06*(n)* of the Sri Lanka Navy Order 0501, reasons should be indicated. Indicating the reasons will mean the manifesting of such reasons, which should be available along with the finding, and therefore, the reasons for the finding should be provided. The Presiding Officer had clearly failed and not provided any reasons, even in basic summary form. Therefore, the failure to give reasons does amount to the violation of the rules of natural justice.

11. In this regard, I advert to the duty to give reasons as provided for in the common law. Although it may be argued that a 'duty' to give reasons did not exist originally in the common law, this status quo has now changed. As S. A. de Smith in "De Smith's Judicial Review" (6th Ed., page 413) observes:

> *". . . . it is certainly now the case that a decision-maker subject to the requirements of fairness should consider carefully whether, in the particular circumstances of the case, reasons should be given. Indeed, so fast is the case law on the duty to give reasons developing, that it can now be added that fairness or procedural fairness usually will require a decision-maker to give reasons for its decision. Overall the trend of the law has been towards an increased recognition of the duty to give reasons . . . ."*

Lord Pearce, in the landmark decision of ***R vs. Minister of Agriculture and Fisheries ex p. Padfield*** [1968] UKHL 1, in agreement with Lord

Reid, Lord Morris of Borth-y-Gest, Lord Hodson, and Lord Upjohn, noted as follows:

> *"If all the prima facie reasons seem to point in favour of his taking a certain course to carry out the intentions of Parliament in respect of a power which it has given him in that regard,* ***and he gives no reason whatever for taking a contrary course, the Court may infer that he has no good reason*** *and that he is not using the power given by Parliament to carry out its intentions."*

In considering this position on the duty to give reasons in the Sri Lankan context, Dr. Shirani Bandaranayake, J. (as her Ladyship then was), in ***Sirimasiri Hapuarachchi vs. Commissioner of Elections*** (2009) 1 SLR 1, cited with approval the decision of ***Wijepala vs. Jayawardene*** (S.C. Application No. 89/1995, SCM 30.06.1995) as follows:

> *"In* ***Wijepala v. Jayawardene*** *(supra), considering the necessity to give reasons, at least to this Court, Fernando, J., was of the view that, 'The petitioner insisted, throughout, that established practice unquestionably entitled him at least to his first extension and that there was no relevant reason for the refusal of an extension...*
>
> *Although openness in administration makes it desirable that reasons be given for decisions of this kind, in the case I do not have to decide whether the failure to do so vitiated the decision. However, when this Court is requested to review such a decision, if the petitioner succeeds in making out a prima facie case, then the failure to give reasons becomes crucial.* ***If reasons are not disclosed, the inference may have to be drawn that this is because in fact there were no reasons*** *- and so also,* ***if reasons are suggested, they were in fact not the reasons, which actually influenced the decision in the first place***" (emphasis added).

More recently, Samayawardhena, J., in ***Sierra Construction Ltd vs. Road Development Authority and Others*** (SC/FR/135/2023, SC Minutes of 10.02.2025 at page 20) held as follows:

> *"A decision devoid of reasons is fundamentally flawed and amounts to no decision. The requirement to provide reasons serves*

as a safeguard against arbitrariness and upholds the principles of justice, fairness and transparency in decision-making."

Such is the position of the common law in administering natural justice. In any event, this is a statutory duty onerous upon the Presiding Officer in the present matter as per item 06*(n)* of Sri Lanka Navy Order 0501 (P-15), which sets out the regulations in relation to Boards of Inquiry and Summary Trials. No reasons being provided is therefore a direct failure to comply with the basic procedural requirement prescribed by item 06*(n)* in Order 0501 (P-15).

12. Then, at the closure of the prosecution submissions, the Prosecuting Officer had called upon the Presiding Officer to consider the preliminary investigating report dated 26.08.2020 and the evidence of the witnesses to consider this matter. It is thereafter that the Presiding Officer made the three-line pronouncement, and the Presiding Officer specifically and expressly stated that he had considered the evidence and the preliminary investigation report dated 26.08.2020. 06*(n)* of Order 0501 specifically prohibits the consideration of any other material other than the evidence led before the court. Therefore, the finding should be based only upon the evidence led before the Summary Trial. The expressed declaration that the preliminary investigation report was submitted and it was considered is in direct violation of 06*(n)* of Order 0501. This is beyond a mere procedural irregularity, and it amounts to the consideration of irrelevant reasons in making the impugned decision.

13. When this matter was taken up for argument, the learned State Counsel was not able to explain or justify this glaring irregularity. Her response was that the evidence available on the record is sufficient to establish the offence as charged. In the exercise of writ jurisdiction in judicial review, the legality, procedural propriety, and reasonableness are the primary considerations. Even if there be material evidence, what is important is that such material and its relevance or irrelevance, credibility, and sufficiency should be consciously considered by the

decision-maker, following the correct procedure. In this regard, I find the following passage from Wade & Forsyth's "Administrative Law" (11th Ed., at pg. 323) pertinent:

> *"There are many cases in which a public authority has been held to have acted from improper motives or upon irrelevant considerations, or to have failed to take account of relevant considerations, so that its action is ultra vires and void. It is impossible to separate these cleanly from other cases of unreasonableness and abuse of power, since the court may use a variety of interchangeable explanations, as was pointed out by Lord Greene. Regarded collectively, these cases show the great importance of strictly correct motives and purposes. They show also how fallacious it is to suppose that powers conferred in unrestricted language confer unrestricted power."*

Further, A.H.M.D. Nawaz, J. (P/CA, as his Lordship then was), with Shiran Gooneratne, J. and Arjuna Obeyesekere, J. agreeing, in ***Tennakoon Mudiyanselage Janaka Bandara Tennakoon vs. Hon. Attorney General and Others*** (CA/WRT/335/2016, decided on 15th November 2020), held as follows:

> *"In administrative justice, failure to take into account relevant considerations and taking into account irrelevant considerations would taint and nullify the decision as illegality which is an aspect of Wednesbury unreasonableness. Our attention has not been drawn to any analysis or consideration of these matters before a decision was made to indict the Petitioner."*

14. In judicial review, this Court is not concerned with the merits of the case, but as to whether the decision made is lawful or unlawful in the sense of legality. The decision-maker should manifest that he had adverted to and considered the merits and demerits of the relevant facts and there should be no consideration of any irrelevant facts. That being so, the Presiding Officer had clearly taken into consideration irrelevant facts. There is no demonstration or manifestation of any reasons either.

15. This decision of the Presiding Officer is bad in law, illegal, and fundamentally flawed for the reasons as adduced above. Thus, the petitioner is entitled to the writ of *certiorari* as prayed for by prayer *(c)*,

to the extent of quashing the finding of guilt and the imposition of the punishment contained in document R-2. Accordingly, writ of *certiorari* is hereby issued, quashing the determination and the opinion ("උසාවියේ මතය හා විනිශ්චය") being "2020 අගෝස්තු මස 26 වන දිනැති අංක ඒපීඑම් (ඊ) / අයිඑන්වී/32/2020 දරණ මූලික විමර්ෂණ වාර්ථාව සහ ලැබී ඇති සාක්ෂි සැලකිල්ලට ගනිමින් මොහු වරදකරු බවට ඔප්පු කර ඇති බැවින් චිත්තිකරු වරදකරු බවට ගරු උසාවිය විසින් තීරණය කරන ලදි." Further, writ of *certiorari* is also issued quashing the warrant of punishment annexed to document R-2, and referred to in P-17.

16. The granting of the aforesaid writs of *certiorari* will, in effect, encompass the relief prayed for by prayers *(d), (e),* and *(f)*. Accordingly, the consideration of prayers *(d), (e),* and *(f)* are not necessary. It is now common ground that the recommendation has been forwarded to the President, who has now acted upon the same and confirmed the said punishment. In these circumstances, relief prayed for by prayers *(g)* and *(h)* cannot be granted. As for relief prayed for by prayers *(i)* and *(j)*, upon the President confirming and approving the recommended sanction, there is no statutory duty or authority vested with the respondents to submit further recommendations as prayed for by prayer *(i)*. Accordingly, the relief sought by prayers *(i)* and *(j)* cannot be granted by this Court.

17. Accordingly, the application is allowed, subject to the above limitations.

Application is allowed to that extent.

JUDGE OF THE COURT OF APPEAL