

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

*In the matter of a Rule in terms of
Section 42 of the Judicature Act No.
02 of 1978, against Aruna Deepada
De Silva, Attorney-at-Law.*

Nishan Chandima Abeywardena,
Acting Head of Air Navigation Services,
Airport and Aviation Services Sri Lanka
(Pvt) Ltd.,
Bandaranaike International Airport,
Katunayake.

SC Rule No. 06/2023

Complainant

-Vs-

Aruna Deepada De Silva,
145/3A,
Park Road,
Colombo 05.

Respondent

Before: **P. PADMAN SURASENA J,
ACHALA WENGAPPULI J,
MAHINDA SAMAYAWARDHENA J.**

Counsel: Dr. Romesh de Silva PC for the Respondent,
Rohan Sahabandu PC with Ms. S. Senanayake for the Bar Association of Sri Lanka,
Dileepa Pieris SDSG with Ms. Sabrina Ahmed SC for the Attorney General.

Inquiry on: 22-01-2024

Decided on: 15-03-2024

P. Padman Surasena J

The Rule dated 14-07-2023 under the hand of the Registrar of this Court has been issued against the Respondent Attorney-at-Law. When the court took this matter up for inquiry, Dr. Romesh De Silva PC appearing for the Respondent Attorney-at-Law, Mr. Dileepa Pieris Senior Deputy Solicitor General appearing for the Attorney General and Mr. Rohan Sahabandu PC appearing for the Bar Association of Sri Lanka, concurred that the Court can proceed with this inquiry on the available material in the brief.

Moreover, the learned Senior Deputy Solicitor General Mr. Dileepa Pieris confirmed to us that it would not be necessary to lead oral evidence of any witness, as the basic facts pertaining to the background under which the instant Rule has been issued are not disputed by the parties.

Pursuant to this agreement, the court proceeded to hear the extensive submissions made by Dr. Romesh De Silva PC appearing for the Respondent Attorney-at-Law. Dr. Romesh De Silva PC made this submission in order to show cause (as directed in the Rule) as to why this Court should not affirm this Rule issued against the Respondent Attorney-at-Law. Subsequent to Dr. Romesh De Silva PC's submissions, Court proceeded to hear the submissions made by the learned Senior Deputy Solicitor General Mr. Dileepa Pieris who appeared for the Attorney General and the submissions made by Mr. Rohan Sahabandu PC who appeared for the Bar Association of Sri Lanka. Thereafter, the Court reserved the order and hence this order.

At the outset, it must be noted that when this case was taken up in Court on 14-07-2023, the learned counsel who appeared for the Complainant had informed Court that the Complainant named in this Rule has no objection to the application made on that day by Dr. Romesh De Silva PC (who appeared for the Respondent Attorney-at-Law), to have this proceeding terminated without holding the inquiry. The Court having decided that there was no legal basis to terminate this proceeding at that stage, had then read out the Rule against the Respondent Attorney at Law on that day subsequent to which the learned President's Counsel appearing for the

Respondent Attorney-at-Law had informed Court that the Respondent Attorney-at-Law has a cause to show as per the direction in the Rule issued against the Respondent Attorney-at-Law by this Court. It was thereafter that the Court had fixed the inquiry for 06-12-2023. As the bench was not properly constituted on 06-12-2023, the Court could not commence the inquiry on that date. Consequently, the Court had re-fixed the inquiry for 22-01-2024.

When the Court commenced the inquiry on 22-01-2024, the learned President's Counsel who appeared for the Respondent Attorney-at-Law addressing Court, adduced reasons as to why this Court should discharge the Rule issued against the Respondent Attorney-at-Law. I observe that the Rule issued against the Respondent Attorney-at-Law has alleged breaches of Rule 60 and Rule 61 of the Supreme Court (Conduct of and Etiquette for Attorneys at Law) Rules 1988. As per the Rule, there are several acts which the Respondent Attorney-at-Law has allegedly committed in this instance. According to the Rule, it is those acts committed by the Respondent Attorney-at-Law which have rendered the Respondent Attorney-at-Law unfit to remain as an Attorney-at-Law of the Supreme Court in terms of the Supreme Court (Conduct of and Etiquette for Attorneys at Law) Rules 1988. The Rule has enumerated the said acts in the following manner:

- A. *He had entered the Bandaranaike International Airport ("BIA") premises on 02 June 2022 at or around 1215 hrs with a day pass to enter the Navigational Service Complex ("NSC") of the BIA,*
- B. *He had thereafter proceeded to enter the office of the Complainant accompanying the Fiscal Officer of the Commercial High Court of the Western Province (Exercising Civil Jurisdiction) Holden in Colombo ("the Commercial High Court"),*
- C. *He had, upon entering the office of the Complainant, proceeded to interrupt the telephone conversation that the Complainant was engaged in with the Director General of Civil Aviation ("DGCA"),*
- D. *He had at that stage, upon the Fiscal Officer of the Commercial High Court serving the enjoining order dated 02 June 2022 of the case No. CHC/126/2022/MR on the Complainant, without giving the Complainant sufficient time to study the aforesaid enjoining order, drawn the Complainant's*

notice to the last two paragraphs of pages 2 and 3 of the enjoining order and misrepresented to the Complainant that the enjoining order was binding on the Complainant and further willfully suppressed the fact that the enjoining order was not issued against the Complainant,

- E. *He had thereafter informed and impressed upon the Complainant that if the Complainant delayed the immediate implementation of the aforesaid enjoining order, the Complainant would be in Contempt of Court.*

I observe at the outset, that the conduct of the Respondent Attorney-at-Law which the Rule has alleged to be a conduct unworthy of an Attorney-at-Law, revolves around the act of serving an enjoining order on the Acting Head of Air Navigation Services of the Airport and Aviation Services of Bandaranaike International Airport, Katunayake. Thus, let me first examine the relevant enjoining order. The learned Judge of the Commercial High Court in his order dated 02-06-2022, had issued the enjoining order as prayed for in paragraphs **D** and **G** of the Plaintiff dated 31-05-2022. For the purpose of evaluating the submissions made by the learned Counsel for all the parties, it would be necessary to examine these two prayers of the Plaintiff dated 31-05-2022. They are as follows:

*"D. An **Enjoining Order** until the determination of the application for interim injunction, restraining and preventing the 1st Defendant from and/or the 1st Defendant's servants, agents, assigns and/or those authorized to permit the 1st Defendant from permitting the 1st Defendant to, operate (whether commercially or otherwise), handle, use, take off ground and/or fly the Aircraft described in the Schedule hereto, pending the constitution of the Arbitral Tribunal pursuant to Request for Arbitration marked "**P24**" and an Award by the Arbitral Tribunal regarding the delivery and possession of the said aircraft,*

*G. An **Enjoining Order** until the determination of the application for interim injunction, restraining and preventing the 1st Defendant and/or its servants, agents, assigns from removing any aircraft documentation (including certificates; aircraft log, records, books or manuals) or any parts, equipment components, systems or modules from the Aircraft described in the Schedule hereto, pending*

the constitution of the Arbitral Tribunal pursuant to Request for Arbitration marked "P24" and an Award by the Arbitral Tribunal in that regard."

As pointed out by Dr. Romesh De Silva PC, I observe that the Plaintiff has prayed for, the enjoining order as per prayer (D) of the Plaintiff dated 31-05-2022 against two categories of persons. The said two categories of persons are as follows:

1. *The 1st Defendant and/or the 1st Defendant's servants, agents, assigns and/or;*
2. *Those authorized to permit the 1st Defendant from permitting the 1st Defendant to, operate (whether commercially or otherwise), handle, use, take off ground and/or fly the Aircraft described in the Schedule.*

A close scrutiny of this prayer would show clearly that it is not correct to say that the enjoining order issued by the learned Commercial High Court Judge on 02-06-2022 has only been issued against the 1st Defendant of the case in the Commercial High Court. The said enjoining order has been prayed for against the 2nd Defendant of the case also because, it was the 2nd Defendant who was the Acting Head of Air Navigation Services of the Airport and Aviation Services Sri Lanka (Pvt) Ltd. of Bandaranaike International Airport, Katunayake who could have permitted the 1st Defendant's servants, agents or assigns to take off the ground and fly, the aircraft described in the schedule to the Plaintiff.

In addition to the above, I also observe that while there are only two Defendants named in the Plaintiff, the 1st Defendant is *Public Joint Stock Company "Aeroflot – Russian Airlines", Arbat Str., build 10, Moscow 119002, Russia*. Thus, as the address indicates, the 1st Defendant is an entity based in Moscow, Russia who could not have any authority over the affairs of the Air Navigation Services of Bandaranaike International Airport, Katunayake. This fact also indicates that it was the 2nd Defendant who was the Acting Head of Air Navigation Services of the Airport and Aviation Services Sri Lanka (Pvt) Ltd. of Bandaranaike International Airport, Katunayake who was responsible for implementing the said enjoining order by denying the permission for the aircraft described in the schedule to the Plaintiff to take off the ground and/or fly.

The above position that the enjoining order dated 02-06-2022 has been issued against the 2nd Defendant of the case as well, would in my view, render, the allegation in the Rule that the Respondent Attorney-at-Law had misrepresented to the Acting Head of Air Navigation Services

that the said enjoining order was binding on him as well, untenable. It also renders the position that the Respondent Attorney-at-Law had willfully suppressed that the enjoining order was not issued against the said Acting Head of Air Navigation Services, untenable.

When the Court took this case up for inquiry on 22-01-2024, Mr. Dileepa Pieris Senior Deputy Solicitor General appearing for the Attorney General brought to the notice of Court that Nishan Chandima Abeywardena (the Head of Air Navigation Services of the Airport and Aviation Services of Bandaranaike International Airport, Katunayake who stands as the Complainant in this Rule), has passed away on 12-12-2023. This has left only the affidavits filed by him before Court. While I do not intend to proceed to discuss about their admissibility in Court in his absence, I wish to advert only to the maximum impact that the said affidavits can have on the case against the Respondent Attorney-at-Law.

In doing so, let me observe that the Head of Air Navigation Services of the Airport and Aviation Services of Bandaranaike International Airport, Katunayake (the Complainant), in his affidavit dated 5th June 2022 submitted to the Commercial High Court, has declared and affirmed inter alia to the followings:

- a. *At or about 12 noon on the 2nd of June 2022 a person who identified himself as the Additional Registrar of the Commercial High Court of Colombo named K. A. C Perera called him and instructed him to stop the aircraft departing citing the enjoining order issued by the Commercial High Court Colombo;*
- b. *He had informed the said caller that he would require a copy of the said enjoining order to bring the said enjoining order to the notice of the Director General of Civil Aviation (DGCA) who is the relevant regulating authority;*
- c. *While he was on a telephone call with the DGCA, a Fiscal Officer who identified himself as from Commercial High Court and Attorney-at-Law Mr. Aruna De Silva entered the Bandaranaike International Airport (BIA) premises with a day pass to enter the Navigational Service Complex (NSC) area, around 1215 hrs on 2nd June 2022 and proceeded to enter his office;*
- d. *The said aircraft was scheduled to take off at 12.50PM on 2nd June 2022;*

e. The said Attorney-at-Law without providing him an opportunity to consult the appropriate regulatory authority who is the DGCA, also conveyed that if I delay the implementation of the Enjoining Order that he would be in Contempt of Court.

Thus, the complainant also in his affidavit has admitted that the Respondent Attorney-at-Law has entered the Bandaranaike International Airport premises with a day pass. Therefore, one cannot say that the Respondent Attorney-at-Law had entered the airport unlawfully. Moreover, the following two factors would shed more light on the purpose of Fiscal's visit to the Complainant's office. These two factors are: the fact that the Additional Registrar of the Commercial High Court of Colombo had called the Complainant and instructed him to stop the aircraft departing citing the enjoining order issued by the Commercial High Court Colombo; the fact the Complainant himself had required from the Additional Registrar of the Commercial High Court of Colombo, a copy of the said enjoining order. Thus, the Complainant could not have been surprised at all to see the Fiscal of the Commercial High Court Colombo at his office at the relevant time.

Even according to the afore-said affidavit of the Head of Air Navigation Services of the Airport and Aviation Services of Bandaranaike International Airport Katunayake: the relevant aircraft was scheduled to take off at 12.50 PM on 2nd June 2022; about 12 noon on the 2nd June 2022 an Additional Registrar of the Commercial High Court of Colombo had called him and instructed him to stop the aircraft departing citing the enjoining order issued by the Commercial High Court Colombo; the Respondent Attorney-at-Law had entered the Bandaranaike International Airport premises with a day pass around 1215 hrs. on 2nd June 2022. These facts clearly indicate that there was definitely a need for the immediate implementation of the relevant enjoining order which was to prevent the air craft taking off the Bandaranaike International Airport. This is so in view of the fact that there was no gainsaying that the Commercial High Court had by that time issued an enjoining order to that effect.

I also observe that a Partner of the Firm which stood as the instructing Attorney for the Plaintiff in the relevant case, in her affidavit dated 01st July 2022, has affirmed to the fact that the Respondent Attorney-at-Law was specifically directed by the Firm to accompany the Fiscal in a vehicle provided by the Firm to Bandaranaike International Airport Katunayake. The said Partner of the Firm has also affirmed to two more important things: the fact that the said step was taken

to ensure that the Fiscal serves the papers on the correct person; the fact that the Respondent Attorney-at-Law had acted in this instance on behalf of the Firm. Therefore, one cannot conclude that the acts attributed to the Respondent Attorney-at-Law are acts solely planned, designed and executed on the sole decision of the Respondent Attorney-at-Law by himself.

As pointed out by Mr. Rohan Sahabandu PC, the warning given by the Respondent Attorney-at-Law, to the said Acting Head of Air Navigation Services that if he delayed the immediate implementation of the relevant enjoining order, he would be in contempt of Court can also be viewed as a warning, the Respondent Attorney-at-Law has thought it fit to have given in good faith. Having regard to the factual circumstances of this case, I have no basis to disagree with the submissions made by Mr. Rohan Sahabandu PC that such warning may indeed have been in the best interest of the said Acting Head of Air Navigation Services. Thus, I am unable to hold that the act of the Respondent Attorney-at-Law to inform and impress upon the Acting Head of Air Navigation Services that he would be in Contempt of Court if he delayed the immediate implementation of the aforesaid enjoining order, as necessarily an act of interfering with the official functions and/or duties of the Complainant or a conduct the manner of which would necessarily render the Respondent unworthy of an Attorney-at-Law thereby rendering him unfit to remain as an Attorney-at-Law.

One has to also bear in mind that the Respondent Attorney-at-Law had not entered the Complainant's office alone but had gone there representing the Firm which stood as the instructing Attorney, to accompany the Fiscal in order to ensure that the Fiscal serves the papers on the correct person. Having regard to the above, and in view of the factual background of this case, the allegation that the Respondent Attorney-at-Law had entered the office of the Acting Head of Air Navigation Services, interrupting the telephone conversation the said Acting Head of Air Navigation Services was engaged in with the Director General of Civil Aviation, in my view would not amount to acts which would necessarily bring the Respondent Attorney-at-Law culpable under Rule 60 or Rule 61 of the Supreme court (Conduct of and Etiquette for Attorneys at Law) Rules 1988.

Moreover, I cannot forget the stance taken up by the learned President's Counsel who represented the Bar Association of Sri Lanka. It was his submission that the Bar Association of

Sri Lanka would not consider the conduct of the Respondent Attorney-at-Law in this instance, as a conduct unworthy of an Attorney-at-Law and hence the Bar Association of Sri Lanka would not accept that the Respondent Attorney-at-Law had committed a breach of the afore-said Rule 60 or Rule 61.

For the foregoing reasons, I accept the submissions made by Dr. Romesh De Silva PC who appeared for the Respondent Attorney-at-Law, as well as submissions made by Mr. Rohan Sahabandu PC who appeared for the Bar Association of Sri Lanka. I hold that the Respondent Attorney-at-Law has not committed any act of deceit, malpractice and/or offence as set out in Section 42(2) of the Judicature Act No. 02 of 1978 read with the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988. I also hold that the Respondent Attorney-at-Law has not committed any act which would amount to a conduct unworthy of an Attorney-at-Law which would render him unfit to remain as an Attorney-at-Law under any Rule of the Supreme court (Conduct of and Etiquette for Attorneys at Law) Rules 1988.

For the foregoing reasons, I decide to discharge the Rule dated 01-07-2023 issued against the Respondent Attorney-at-Law.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI J

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA J

I agree.

JUDGE OF THE SUPREME COURT