

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

In the matter of an Application under and in terms of Article
126 of the Constitution of Sri Lanka

T. R. Ratnasiri,
23/4, Makola South,
Makola.

S.C.F.R.No. 536/2010

PETITIONER

Vs.

1. **P.B. Jayasundara,**
Secretary to the Ministry of Finance and Planning, The
Secretariat Building,
Colombo 01.

2. **Sarath Jayathilake**
117/30 Ananda Rajakaruna Mawatha
Colombo 10

3. **Thilak Perera,**
Director of Customs,
40, Main Street
Colombo 11

4. **Director General of Customs**
Sri Lanka Customs Department
40, Main Street
Colombo 12

Sudharma Karunarathna (May 2010 - Jan 2012)

Now the Secretary
Ministry of Plantation Industries
55/75, Vauxhall Lane
Colombo 2

Neville Gunawardena (Jan 2012 - December 2012)
Now the Director General Trade & Investment Policy
Ministry of Finance
General Secretariat
Colombo 1

Jagath Wijeweera

(Dec 2012 to date)

5. **Board of Investment of Sri Lanka,**
West Tower,
World Trade Centre, Echelon Square,
Colombo 01.
6. **Colombo Dockyard Ltd,**
P.O. Box 906, Port of Colombo,
Colombo 15.
7. **Mohan Peiris**
Former Attorney General
3-14D, Kynsey Road
Colombo 8
8. **Attorney General**
Attorney General's Department
Colombo 12

RESPONDENTS

**TO: THE HON CHIEF JUSTICE AND OTHER HON JUSTICES OF THE SUPREME COURT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

On this 28th day of January 2013

WHEREAS this application was first tendered to this Court on 24th of September 2010

AND WHEREAS on 15th Oct 2010, Mr Upul Jayasuriya, the then Counsel, for the Petitioner informed the Court that he wishes to support the Application with amended papers and application was allowed and the matter was fixed for support on 21st October 2010

AND WHEREAS on 07th October 2010 and 17th October 2010, Mr Upul Jayasuriya amended the Petition twice, first, withdrawing all references to the misconduct of the Attorney General Mohan Peiris, including the withdrawal of the affidavit of the Director General of Customs (the document marked **P12**), and secondly citing Mohan Peiris (who had been cited in his personal Capacity as the 1st Respondent) as the last Respondent (7th Respondent) as required by the Rules

AND WHEREAS on 21st Oct 2010, an application made by the Attorney General to obtain instructions from the 1st Respondent was allowed and the matter was listed for support on 11th January 2011

AND WHEREAS on 11th January 2011, Ratnayake J did not wish to participate in the matter and in the absence of Mr Upul Jayasuriya Mr Nagananda Kodituwakku appeared for the Petitioner and the matter was fixed for support on 22nd Feb 2011

AND WHEREAS on 22nd of February 2011 1st and 6th Respondents, were neither present nor represented and the matter was fixed for support on 21st June 2011

AND WHEREAS on 21st June 2011, on an application made by the Attorney General for personal grounds (unspecified) the matter was taken off the roll and was fixed for support on 30th Sep 2011

AND WHEREAS on 30th September 2011 Dep J indicated his unwillingness to hear the case and the 5th Respondent, was absent and unrepresented and order was made to reissue notice on the 5th Respondent through the Registry and the matter was fixed for support on 05th December 2011

AND WHEREAS on 05th December 2011, in the absence of the Counsel Mr Upul Jayasuriya an application was made by the Junior Counsel for the Petitioner, Mr Nagananda Kodituwakku, to restore the document marked **P12** and also to amend the Petition dated 17th Oct 2010, restoring the relevant facts concerning the misconduct on the part of the 7th Respondent, Mohan Peiris, and the Court allowed the proposed amendments and to cite Mohan Peiris in his personal capacity as the 7th Respondent and also as the 'former Attorney General' and cite the Attorney General as the 8th Respondent as required by the Rules and the matter was fixed for support on 25th January 2012

AND WHEREAS on 26th December 2011, the Petitioner tendered an Amended Petition dated 23rd December 2011 setting out the relevant facts together with an affidavit affirmed by the Petitioner dated 22nd November 2011, alleging the professional misconduct of the Counsel Mr Upul Jayasuriya, which the Petitioner had reported to the Hon. Chief Justice

AND WHEREAS on 25th January 2012, further to objections raised by the Attorney General to the Amended Petition, the Court directed the Petitioner, only to amend the Caption of the Petition citing the 7th Respondent (Mohan Peiris) as the former Attorney General and to cite the Attorney General as the 8th Respondent and the matter was fixed for support on 27th March 2012

AND WHEREAS on 27th March 2012 the bench included Dep J, who on 30th Sep 2011 had clearly indicated his unwillingness to hear the case, and accordingly the matter was postponed for 02nd July 2012

AND WHEREAS the matter which was due to be supported on 02nd July 2012, had been called in Court on 21st June 2012, with no notice to the Petitioner and had been re-fixed ex-parte for 06th September 2012

AND WHEREAS on 02nd July 2012 the Counsel for the Petitioner, Mr Nagananda Kodituwakku, appeared in Court and found that the case had been unilaterally called on 21st June 2012 and postponed for support on 06th September 2012

AND WHEREAS on 04th July 2012 Petitioner filed a motion seeking to support the Petition on 11th, 12th or 13th July 2012

AND WHEREAS on 05th July 2012 the Counsel tendered an Affidavit (05th July 2012) by the Petitioner to the Hon. Chief Justice, notifying that when he attended the Court on 02nd July 2012, the Petitioner found that the case had been taken out of the support list and on inquiry the Registry had informed him that the case was taken up on 21st June 2012 and postponed to 06th Sep 2012 and he confirmed in the affidavit he had not been informed of any such move by the Attorney General

AND WHEREAS on 09th July 2012, Hettige J disregarded the request for an earlier date and ordered that the matter be taken off the support list of cases fixed for 06th Sep 2012 and that the matter be mentioned on 06th September 2012 to fix a date for support of the Petition

AND WHEREAS on 12th July 2012, the Counsel for the Petitioner, Mr Nagananda Kodituwakku made a written representation to the Hon. Chief Justice that Hettige had disregarded the Motion filed on 04th July 2012 and had made an order to take the matter off the support list of cases fixed for 06th September 2012 and only to mention the matter on 06th September 2012 to re-fix a date

AND WHEREAS on 19th July 2012 Hettige J directed this Application be listed for support on 06th Sep 2012

AND WHEREAS on 20th July 2012, further to a motion filed in Court, seeking to support the application on 02nd, 06th or 08th of August 2012, which supported by a written representation to the Hon. Chief Justice by way of an Affidavit dated 05th July 2012 by the Petitioner marked '**P18**',

AND WHEREAS on 24th July 2012, Hettige J made an order to take the Application off the list of cases fixed for support on 06th September 2012 and the matter was fixed for support on 06th Aug 2012

AND WHEREAS on 06th August 2012, the Counsel for the Colombo Dockyard Ltd (6th Respondent) was not present in Court citing personal reasons and the matter was re-fixed for support on 10th Sep 2012

AND WHEREAS on 10th Sep 2012 the State Counsel requested a postponement for the reasons that Shavindra Fernando DSG was away on an official matter, strenuous objections were raised by the Counsel for the Petitioner against the recurring postponements and that he was under threat to withdraw from the case. The Court informed the Counsel that he may withdraw from the case if he wishes to do so, and thereby conclude the case and the matter was re-fixed for support on 05th October 2012

AND WHEREAS on 25th September 2012, the Counsel Mr Nagananda Kodituwakku made an entry at the Mirihana Police Station about the apparent threat to his life and left the country on the following day, a copy of which is attached hereto marked '**P19**'

AND WHEREAS when the matter was taken up 05th October 2012, the Junior Counsel who appeared for the Petitioner informed the Court that the Counsel was unavailable and the matter was re-fixed for support on 22nd January 2012

AND WHEREAS further to a motion filed in Court on 12th December 2012, elaborating the reasons for the inordinate delaying tactics adopted by the Respondents and the 7th Respondent's (then the Attorney General) involvement in the case, where his alleged misconduct and abuse of office is clearly exposed by the 4th Respondent, the Director General of Customs in her observation sent to the Attorney General (copy of which is annexed hereto marked '**P20**') the Petitioner moved for an earlier date to support the Application before the commencement of the Court Vacation and the matter was re-fixed for support on 20th December 2012

AND WHEREAS on 20th December 2012 before a Bench chaired by the Hon Chief Justice Shirani Bandaranayake the Petitioner was prevented from supporting the application due to strenuous objections raised by the Respondents that the Notices served on them by the Registered Post had not been served through the Registry, and thus the matter was re-fixed for support on 22nd January 2013

AND WHEREAS further to a motion dated 04th January 2013 this application was fixed for support for Leave to Proceed on 31st January 2013

AND WHEREAS the 7th Respondent has now accepted the appointment to the office of the Chief Justice, despite the allegations of gross professional misconduct and dishonesty made against him in this case

AND WHEREAS the Counsel appearing in this case, Nagananda Kodituwakku, has been warned by email, not to return to Sri Lanka to support this application

AND WHEREAS the Counsel has returned to Sri Lanka on 21st of January 2013 to discharge his professional obligations to the Petitioner, who had been unable to find any other Counsel to present his case, after having reported the recurrent threats to his life (beginning from the month of September 2012) to the Foreign and Commonwealth Office in the UK

AND WHEREAS the Counsel has thereafter been warned by email that he has returned to Sri Lanka at his own risk and any further steps taken by him to support this application would end up with 'fatal results', which threats the Counsel had reported to the Police on 23rd January 2013, a copy of which is annexed here marked '**P21**'

AND WHEREAS in the prevailing circumstances the Counsel fears that he may not be in a position to support this matter on 31st January 2013, but he would make every endeavour to appear in Court and to support this application

I respectfully move that in the event of his being prevented from presenting this case on 31st January 2013, a long date may be given until the safety and security of the Counsel is secured and the Counsel would be free to support the application without any fear

Copies of this Motion, and the documents marked '**P19**', '**P20**' and '**P21**' have been served on all the Respondents by Registered Post and the postal article receipts are annexed hereto in proof of same.



Attorney-at-Law for the Petitioner