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

In the matter of an application under
and in terms of Articles 17 & 126 of the
Constitution of the Republic

Mohamed Junaid Mohamed Imran
24/10, S M Lane, Welipitiya,
Dharga Town
Aluthgama

Petitioner

SC [FR] Appln No: 203/14

vs

1. **N K Illangakoon**
The Inspector General of Police
Sri Lanka Police Headquarters
Colombo 1
2. **Anura Senanayake**
Senior Deputy Inspector General of
Police – Western Province
Sri Lanka Police Headquarters
Colombo 1
3. **R W C N Ranawana**
Deputy Inspector General of Police
Commandant Special Task Force, Police
Headquarters, Colombo 01
4. **Major General (Retd) Nanda
Mallawaarachchi VSV**
Secretary
Ministry of Law and Order
Floor – 13, 'Sethsiripaya' (Stage II),
Battaramulla
5. **Attorney General**
The Attorney-General's Department
Colombo 11

Respondents

On this th day of July 2014,

TO: HIS LORDSHIP THE HONOURABLE CHIEF JUSTICE AND TO THEIR LORDSHIPS AND LADYSHIPS THE OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA:

The Petition of the Petitioner above-named appearing by Razmara Abdeen practising under the name and style ABDEEN ASSOCIATES and his assistants Mrs. Manjula Pasquel, Miss. M. A. Fathima Rizniya and Miss. Fathima Salma Azeez her Attorneys-at-Law, state as follows

1. The Petitioner is citizen of the Democratic Socialist Republic of Sri Lanka and resident at the above address.

Petitioner annexes hereto marked as **P1** a true copy of his national identity card and pleads the same as part and parcel hereof.

2. The 1st Respondent is the Inspector General of Police and is the most senior officer entrusted with the administration of the Sri Lanka Police under section 20 of the Police Ordinance No: 16 of 1865 as amended and under whose command the Police Department functions.
3. The 2nd Respondent is the Senior Deputy Inspector General of Police – Western Province.
4. The 3rd Respondent is the Commandant of the Special Task Force of the Sri Lanka Police and is an officer who functions under the command of the 1st Respondent.
5. The 4th Respondent is the Secretary to the Ministry of Law and Order under which Ministry the Police Department functions.
6. The 5th Respondent is the Attorney – General who has been made a party to this application in compliance with the Rules of the Court and in terms of Article 35(3) of the Constitution of the Democratic Socialist Republic of Sri

Lanka as the Minister in charge of the subject of Law and Order is the President of the Republic.

7. The Petitioner makes this application in his personal capacity as a person whose Fundamental Rights have been violated by the executive and/or administrative action as set out more fully below and in public interest as a member of the public who is affected by the gross and systematic failure on the part of the Sri Lanka Police to uphold the Rule of Law and to fulfil their duties and obligations under the law.

8. The Petitioner states further that the matters set out more fully below constitute executive and/or administrative action within the meaning of the Articles 17 and 126 of Constitution of the Republic of Sri Lanka.

Powers and Duties of Police Officers:

9. The Petitioner states that the 1st Respondent is the head of the Police Department and is a Police Officer and the said Respondent along with those Police officers enlisted in the Police force are under section 56 of the Police Ordinance No: 16 of 1865 as amended deemed to be always on duty and are under a duty in law *inter alia* to;
 - a. use their best endeavours and ability to prevent all crimes, offences and public nuisances;
 - b. to preserve the peace;
 - c. to apprehend disorderly and suspicious characters;
 - d. to detect and bring offenders to justice.

10. Furthermore under section 77 of the Police Ordinance an officer not below the rank of Assistant Superintendent has the power and authority to prohibit processions and under section 77(3) are authorised to prohibit any procession in the interests of preservation of public order where the said officers consider it expedient to do so.
11. Under section 107(1) of the Code of Criminal Procedure Act No: 15 of 1979 every Police officer has a duty to the best of his ability to prevent the commission of any cognisable offence as defined under section 2 of the said Act.
12. The Petitioner states further that under the Code of Criminal Procedure Act No: 15 of 1979 the 1st Respondent and officers acting under him have several powers to prevent the conducting of meetings and processions where there is a likelihood of a breach of the peace.

Failure on the part of the Sri Lanka Police to stop the hate campaign against Muslims and religious minorities:

13. The Petitioner states that even though Chapter XV of the Penal Code and the Prevention of Terrorism (Temporary Provisions) Act No: 48 of 1979 as amended make it an offence for anyone to deliberately intend to wound the religious feelings of any person and/or cause racial or communal disharmony, the Respondents have failed to take any meaningful and effective measures to stop and prevent the anti-Muslim hate campaign that has been carried out by Sinhala Buddhist extremist organisations in Sri Lanka in the past two and a half years.
14. The Petitioner states that previously an attack on the Masjidul Khairiya Jummah Mosque in Dambulla in April 2012 took place whilst there was heavy Police presence which included the participation of Senior officers. This incident received wide media coverage.

The Petitioner annexes hereto marked as **P2A** to **P2D** video stills of video footage available on the website <www.youtube.com> showing the attack on the Dambulla Mosque and pleads the same as being part and parcel hereof.

15. The Petitioner states that to the best of his knowledge no one was arrested and/or prosecuted for the offences committed against the Masjidul Khairiya Jumma Mosque.

16. On 11th September 2011 another place of Muslim religious worship in Anuradhapura was damaged and demolished whilst Senior Police officers watched.

The Petitioner annexes hereto marked as **P3A** and **P3B** the report on the incident by the BBC and a photograph of the said destruction as published in the BBC website <<http://www.bbc.com/news/world-south-asia-14926002?print=true>> showing the presence of several Police officers and marked as **P3C** photographs available on news websites and pleads the same as being part and parcel hereof.

17. The Petitioner states that to best of his knowledge he is not aware of any person being prosecuted for causing damage to property or any prosecution being sanctioned by the 5th Respondent under section 135(1)(e) of the Criminal Procedure Code.

18. On March 19, 2013 at a public meeting held in Kandy organised by the Bodu Bala Sena a member of the Buddhist clergy made inflammatory and offensive statements against Muslims stating that the Holy Quran required Muslims to spit three times on the food before they served the food to non-Muslims in the presence of a large contingent of Police officers who watched and provided security for the event.

The Petitioner annexes hereto marked as **P4A** to **P4B** true copies of the letter sent to the 1st Respondent with regard to said meeting along with the registered postal article receipt and marked as **P4C** and **P4D** true copies of the letter sent by the Attorney-at-Law on behalf of the complainant and the registered postal article receipt in respect of the same and pleads the same as being part and parcel hereof.

19. To the best knowledge of the Petitioner he is not aware of any prosecution being sanctioned by the 5th Respondent under section 135(1)(e) of the Criminal Procedure Code for the offence disclosed as set out above.

20. In August 2013, Masjidul Deenul Islam in Grandpass was attacked by a mob and even in this instance, despite the presence of Police officers, they failed to prevent and/or arrest those responsible for the commission of the said offences.

The Petitioner annexes hereto marked **P5A** to **P5D** photographs of the attack as available on news websites and pleads the same as being part and parcel hereof.

21. The Petitioner submits that this attitude of inaction is not restricted to Muslims but is also shown towards other religious minorities.

The Petitioner annexes hereto marked as **P6** a true copy of the report by the National Christian Evangelical Association of Sri Lanka for the first six months of the year 2014 and setting out a large number of attacks on Christian Churches and pleads the same as being part and parcel hereof.

22. On January 12th, 2014 a church in Hikkaduwa was attacked by Buddhist clergy despite the presence of Police officers with no arrests being made at the time.

The Petitioner annexes hereto marked **P7** a print out of the news report by the BBC available on the website <<http://www.bbc.com/news/world-asia-25716456>> and pleads the same as being part and parcel hereof.

23. The Petitioner states that this failure on the part of the Sri Lanka Police to take meaningful and effective measures in respect of all the incidents set out above has emboldened extremist elements and created a culture of impunity with those committing crimes against minorities confident that the law will not be applied to them with full force.

24. This failure on the part of the 1st and 5th Respondents was the subject of concern that prompted the Bar Association of Sri Lanka to write to the 5th Respondent complaining that despite 'recent instances of open violations of the law...the Police have failed to take appropriate action as required by law'.

The Petitioner annexes hereto marked as **P8** a true copy of the said letter of the President of the Bar Association of Sri Lanka addressed to the 5th Respondent and pleads the same as being part and parcel hereof.

Tinderbox environment:

25. This failure on the part of the Police has resulted in Muslims being subject to violence in many parts of the country and particularly their trade establishments targeted.

26. On May 8th, 2014 a mob led by Buddhist priests came in a procession and protested outside a shop belonging to a Muslim shop 'New Asma Mahal' with some members of the mob armed with poles.

27. The Petitioners state that the Police allowed this procession to take place, despite reporting facts to the Magistrate of Kalutara the previous day on May 7th, 2014 that the Buddhist clergy was intending to have procession with the

objective of inciting communal and religious disharmony and having obtained an order from the Learned Magistrate of Kalutara in case no: BR 1135/14 prohibiting such processions.

The Petitioner annexes hereto marked as **P9** and **P10** respectively a true copy of the affidavit of Mohamed Khan, the proprietor of the said 'New Asma Mahal' and a true copy of the certified copy of the proceedings in the Magistrate's Court of Kalutara in case no: BR 1135/14 and pleads the same as being part and parcel hereof.

2014 New A 28. At around 4:00 am on May 9th, 2014 'New Asma Mahal' was set ablaze.

29. On June 12th, 2014 an alleged incident of assault involving a Buddhist priest led to a large mob gathering outside the Aluthgama Police Station and thereafter several Muslim owned shops in Aluthgama were stoned.

30. Even in this instance false news was spread all over Aluthgama and all over the country stating that a Buddhist priest was assaulted which is denied by those arrested for the alleged assault.

31. In fact in a letter written to the 1st Respondent one of the suspects who arrested although he was not even involved in the incident denies the allegations and states that he was assaulted by Buddhist priest at the Aluthgama Police Station in view of the Police.

The Petitioners annex hereto marked as **P11** a true copy of the said letter written by Moulavi Mohamed Ameen Mohamed Ashkar Ali dated July 10th, 2014 and pleads the same as being part and parcel hereof.

32. The Petitioner states that taken cumulatively these incidents of the burning down of New Asma Mahal and the events of June 12th, 2014 clearly created a

'tinderbox' environment with a dangerous hate campaign against the Muslim community in Aluthgama fuelled by the false propaganda against Muslims.

33. It was in this backdrop that two radical anti – Muslim groups the Bodu Bala Sena and Sihala Ravaya announced that a meeting was to be held at Aluthgama on June 15th, 2014.

The Petitioner annexes hereto marked as **P12** a true copy of a leaflet that was distributed in Aluthgama giving publicity to the said meeting and pleads the same as being part and parcel hereof.

34. The Petitioner states that in the said leaflet marked P12 there was a reference to a 'final solution' that would be announced at the rally on July 15th, 2014.
35. It was in this context that several national Muslim organisations and politicians wrote to the 1st Respondent requesting that the meeting not be held under the circumstances as set out above.

The Petitioner annexes hereto marked as **P13** and **P14** respectively true copies of the letters dated June 15th, 2014 sent jointly by the All Ceylon Jemmiyathul Ulama, The Muslim Council of Sri Lanka, the Wakf Board of Sri Lanka, the All Ceylon Young Mens' Muslim Association and the Colombo Masjid Federation and Deputy Minister Faiszer Musthapha PC and pleads the same as being part and parcel hereof.

36. The Petitioner states that in fact the Division Superintendent of Police Roshan Silva visited the Theruppalli mosque in Dharga town at around 6.30 pm on Saturday May 14th, 2014 night to re-assure the villagers gathered at the mosque that there would be no room for any violence unleashed against the residents of the area as a result of the rally and that adequate Police protection would be given.

37. The Petitioner states that the reasons to stop the meeting were;

a. the Buddhist priest Galagoda Atthe Gnanasara there is known and notorious for using foul language and inciting hatred and violence against Muslims;

b. gathering such a large crowd of supporters and/or sympathisers of extremist groups was dangerous in the context that previously a meeting and a procession of this nature had resulted in the burning of New Asma Mahal and an attack on Muslim shops on May 8th, 2014 and June 12th, 2014 respectively.

38. In these circumstances to have permitted a rally to be held was a grossly arbitrary and negligent act and an irrational exercise of the discretion vested in the 1st Respondent.

39. The Petitioner verily believes that the said rally was held without proper approvals and without a permit to erect a stage or use a loudspeaker and/or amplifiers.

40. However despite the requests by Muslim organisations the Respondents permitted the said organisations to hold this meeting in the Aluthgama town bringing the town to a virtual standstill.

41. At the said meeting several inflammatory speeches were made. The said Galagoda Athe Gnanasara Thero also made a speech wherein he incited the crowds against Muslims and threatened Muslims trade establishments and encouraged people to take the law into their own hands.

The Petitioner annexes hereto marked as **P15** a DVD recording of the entire speech and pleads the same as being part and parcel hereof.

42. The Respondents also allowed a procession to go through Dharga Town – with a crowd that came chanting anti – Muslim and anti – Minority slogans.
43. As the said procession went past Grand mosque on Main Street in Dharga Town participants in the procession begin stoning the mosque and at the Muslims gathered there.

The Petitioner annexes hereto marked as **P16** the affidavit of a person who was standing at the Grand Mosque and pleads the same as being part and parcel hereof.

44. The Petitioner states that video footage clearly showed that the stones were not picked up by those in the procession but those stones were in their hands already establishing that they had come prepared to instigate a clash.

The Petitioner annexes hereto marked as **P17A** to **P17H** video stills of video footage of the said incident as made available on the website <www.youtube.com> and pleads the same as part and parcel hereof.

45. However soon thereafter if not simultaneously mobs began launching attacks on Muslims houses in Adikarigoda, Welipitiya, Seenawatte, Thunduwa, Beruwela and Welipenna and attacking Muslim owned trading establishments in Aluthgama town.

- a. Approximately 48 Homes were completely burnt down;
- b. 2 persons were shot dead;

- c. Over 80 persons were injured with several suffering gunshot injuries including the Petitioner;
- d. 17 Muslim mosques were attacked;
- e. 2248 persons were internally displaced;
- f. 79 Muslims shops attacked and approximately 17 shops completely burnt down.

The Petitioner suffers gun shot injuries:

- 46. The Petitioner states that on June 15th, 2014 the Petitioner was at his residence at S M Lane, in Welipitiya, Dharga Town and heard that Muslim homes were being attacked by mobs in other parts of Dharga Town.
- 47. The Petitioner states that he came to know that a Police curfew was imposed in Aluthgama at around 6.45 pm on June 15th, 2014.
- 48. Despite this at 11.00 pm the residents of Welipitiya received messages to come to the mosque for security as the mobs were attacking Welipitiya.
- 49. Thereafter the Petitioner went to the mosque where the other villagers were gathered. There the Petitioner came to know that a shop belonging to a Muslim was attacked and was being looted and that two houses were set ablaze at S M Road.
- 50. As the members of the families living in those houses which were on fire were missing – the Petitioner volunteered to go look for them and to see whether they were trapped in the burning homes.

51. As the Petitioner proceeded down S M Road he saw further down the road a mob of approximately 300 persons with poles, glass bottles and swords standing.

52. The Petitioner also witnessed around 04 Armed Special Task Force personnel also standing nearby but who took no steps to dispel the mob.

53. Upon seeing the mob the Petitioner rushed towards the burning homes, at which point the Petitioner received several gunshot injuries on to the left side of his body.

54. The Petitioners stated that as soon as he received the gunshots he tried to return back to the mosque but after walking a short distance collapsed on S M Road. Thereafter the Petitioner was taken to the Welipitiya Mosque where he was kept till around 12 midnight when a Police jeep came and took the Petitioner to the Kurunduwatte Hospital in Dharga Town.

55. From there the Petitioner was transferred to the Nagoda Hospital, Kalutara and discharged on July 3rd, 2014.

The Petitioner annexes hereto marked as **P18** a true copy of his diagnosis ticket and pleads the same as being part and parcel hereof.

56. The Petitioner states that he was treated for splenic rupture and lung contusion and has to wear a colostomy bag.

57. As a result of his medical condition the Petitioner is no longer able to pursue his lawful employment.

58. The Petitioner submits that the afore stated damage, loss and harm and commission of criminal offences occurred due to the failure on the part of the

Respondents and those under their command to take measures to prevent a breach of the peace, disperse unlawful assemblies and mobs that roamed Aluthgama on June 15th, 2014 and prevent the commission of offences as bound by law and in respect of which they suffer a direct and/or vicarious and/or command responsibility and/or liability.

59. The Petitioners submit that video footage and eye witness accounts clearly established that;

a. the Police failed to enforce the curfew that was imposed at 6.45 pm and allowed mobs to roam the streets freely;

b. the Police failed to apprehend and/or apprehend the rioters even when they were committing offences in the presence of Police and STF officers.

The Petitioner annexes hereto marked as **P19** a true copy of the affidavit of Mrs Nafesathul Thahira Shahabdeen and pleads the same as being part and parcel hereof.

60. The Petitioner states that most of the damage occurred after 6.45 pm whilst the curfew was imposed.

The Petitioner annexes hereto marked as **P20A** to **P20R** video stills from the CCTV footage from the Ambepitiya Gem Lapidary in Beruwela, marked as **P21** a DVD containing CCTV camera recording and marked as **P22** the affidavit of the Mr N M M Najeem and pleads the same as being part and parcel hereof.

61. The Petitioner states that there was gross negligence, lethargy, inaction and indifference shown by the Police. In fact the Muslims of Aluthgama and Beruwela clearly were of the view that the Police and the Special Task Force facilitated the attack on Muslims.

62. The Petitioner states that the violence spilt over to the second night of June 16th, 2014.
63. The Petitioner states that as a citizen he is ashamed and disappointed with the dismal performance of the Respondents which occurred despite the several assurances of safety and security given by high ranking Police officers.
64. The Petitioner states that the Police not only failed to prevent the attacks but they also demonstrated a lethargic attitude towards an investigating the attacks – similar to the previous instances as set out above.
- marked as P23. The Petitioner annexes hereto marked as **P23** news report of the statement made by the President of the Bar Association of Sri Lanka and plead the same as being part and parcel hereof.
65. The Petitioner states that taken separately or cumulatively these incidents demonstrate and constitute serious and grave violations of the Petitioners' Fundamental Rights guaranteed under Article 12(1) and 12(2) of the Constitution of the Republic of Sri Lanka.
66. The Petitioner also states that his Fundamental Rights of guaranteed under Article 14(1)(e) of the Constitution of the Republic of Sri Lanka have been violated by the Respondents in the manner set out above.
67. The Petitioner also states that his Fundamental Rights guaranteed under Article 14(1)(g) of the Constitution of the Republic of Sri Lanka has been violated by the Respondents in the manner set out above.
68. The Petitioner reserves the right to add further documents and/or affidavits as deemed necessary for the purposes of this application.
69. The Petitioner states that he has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.

WHEREFORE the Petitioners pray that Your Lordships' Court be pleased to:

- a. Grant leave to proceed and issue notices on the Respondent;
- b. Direct the Respondents to produce the permits to erect a stage or use a loudspeaker and/or amplifier for the meeting attended to by Rev Galagoda Athe Gnanasara Thero at the Aluthgama town on June 15th, 2014;
- c. Direct the 1st Respondent to cause investigations to be made into incidents referred to above and report to Your Lordships' Court and bring the offenders to justice according to Law.
- d. Direct the 1st Respondent to formulate instructions/guidelines to prevent persons engaging in hate speech which is calculated to cause ethnic and racial disharmony and to prevent occurrences of racial and/or ethnic unrest;
- e. Direct the 1st Respondent to take steps immediately by giving effective instructions to all Police officers including the Deputy Inspectors General of Police to ensure that they shall promptly and effectively take suitable action to prevent and suppress any similar violence against any segment of the population or any group of persons based on ethnic or religious grounds;
- f. Direct the 1st Respondent to report forthwith to Your Lordships' Court the nature and manner in which such instructions and directions have been given and the manner in which such instructions and directions are sought to be implemented;

- g. Declare that the Respondents have violated the Fundamental Rights of the Petitioner as guaranteed under Article 12(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka;
- h. Declare that the Respondents have violated the Fundamental Rights of the Petitioner as guaranteed under Article 12(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka;
- i. Declare that the Respondents have violated the Fundamental Rights of the Petitioner as guaranteed under Article 14 (1) (e) of the constitution of the Democratic Socialist Republic of Sri Lanka;
- j. Declare that the Respondents have violated the Fundamental Rights of the Petitioner as guaranteed under Article 14(1)(g) of the Constitution of the Democratic Socialist Republic of Sri Lanka;
- k. Direct the 1st Respondent to formulate instructions/guidelines to prevent persons engaged in hate speech which is calculated to cause ethnic and racial disharmony and to prevent occurrences of racial and/or ethnic unrest;
- l. Grant compensation to the Petitioner;
- m. Grant Costs;
- n. Grant such and other further relief as shall seem meet to Your Lordships' Court.

Abdulla Assouli
Attorney-at-Law for the Petitioner