

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

In the matter of an application under  
Article 140 of the Constitution for  
Mandates in the nature of Writ of  
***Mandamus***

1. T R Ratnasiri  
23/4, Makola South  
Makola
2. Nagananda Kodituwakku  
99, Subadrarama Road  
Nugegoda

**Petitioners**

**Vs**

**CA (Writ) Application No: 65/2015**

1. D.J.De S. Balapatabendi
2. L.K Wimalachandra
3. Jayantha Wickramaratne
4. Ganesh R Dharmawardena
5. Luxman Wijetunga

All at Bribery Commission  
No 36 Malalasekera Mawatha,  
Colombo 07,  
Sri Lanka

6. Mohan Peiris  
3-14D, Kinsey Road  
Colombo 8
7. The Attorney General  
The Attorney General's Department  
Hulftsdorp  
Colombo 12

**RESPONDENTS**

To: THE HON' PRESIDENT JUDGE AND THE OTHER HON' JUDGES OF THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

On this 02<sup>th</sup> day of February 2015

The **Petition** of the Petitioners above-named appearing in person by the 2<sup>nd</sup> Petitioner states as follows:-

### **Parties to the Application**

1. The 1<sup>st</sup> Petitioner is a Deputy Superintendent of Customs and a citizen of Sri Lanka and the 2<sup>nd</sup> Petitioner is an Attorney-at-Law and Solicitor and a citizen of Sri Lanka & UK and they have *locus standi* in the above matter as pleaded.
2. The 1<sup>st</sup> Respondent is the Chairman and 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are Commissioners of the Commission to Investigate Allegation of Bribery or Corruption whilst the 4<sup>th</sup> Respondent is the Director General and 5<sup>th</sup> Respondent is the Secretary of the said Commission. 6<sup>th</sup> Respondent is the former Attorney General, the former Legal Advisor to the President and the Cabinet of Ministers and the 7<sup>th</sup> Respondent is the Attorney General of the Republic of Sri Lanka and the 7<sup>th</sup> Respondent is named as a party to this application for the purpose of serving notice only.

### **Complaint of Corruption made against the 6<sup>th</sup> Respondent**

3. The 1<sup>st</sup> Petitioner states that a prima facie Customs case of misappropriation of public funds of over 600 million rupees was investigated into by him in the year 2000. However, hearing of this case was inordinately delayed due to undue interferences and two court cases. And further to an action (SC/Spl/100/2009) instituted by the Director General of Customs (hereinafter referred to as the DGC) finally it went to Supreme Court in June 2009.
4. The 1<sup>st</sup> Petitioner states that this Court action was filed for the DGC by the then Solicitor General Priyasad Dep as the 6<sup>th</sup> Respondent in his capacity as the Attorney General disregarded the number of representations made, including the written representation dated 13<sup>th</sup> May 2009 made in that regard by the DGC.

*The DGC's written representation made to the 6<sup>th</sup> Respondent dated 13<sup>th</sup> May 2009 marked 'P1' is attached hereto.*

5. The 1<sup>st</sup> Petitioner states that further to filing of this Court action, 6<sup>th</sup> Respondent abused his office to withdraw this Court case in number of occasions and finally further to an application made by the Attorney General, the Supreme Court dismissed it on 30<sup>th</sup> Aug 2010. Herein, the Attorney General appearing for the DGC, acted absolutely against his own opinion, which had earlier been expressed to the DGC on 04<sup>th</sup> Nov 2009 and also against the DGC's own written instructions given to the 6<sup>th</sup> Respondent not to withdraw the said case. In the said letter the DGC, specifically referred to the opinion expressed by the 6<sup>th</sup> Respondent on 04<sup>th</sup> Nov 2009, highlighting colossal loss of revenue of over 600 millions that would be incurred by the Customs Department in the event the case was withdrawn.

*The Order made by the Court referred to above on 30<sup>th</sup> Aug 2010 marked P2 is attached hereto*

6. The 1<sup>st</sup> Petitioner states that 6<sup>th</sup> Respondent's abuse of office and withdrawal of the said court action effectively caused a colossal loss of government revenue that fell well within the provisions of Section 70 of the Bribery Act. Therefore after the new administration under the President Maithreepala Sirisena was installed the 2<sup>nd</sup> Petitioner formally made a complaint of criminal offence of corruption against the 6<sup>th</sup> Respondent to the 1<sup>st</sup> Respondent on 19<sup>th</sup> January 2015 by an electronic mail sent from London to the email address provided by Corruption Commissioner's website, followed by a hardcopy delivered to the 1<sup>st</sup> Respondent by Registered post on 20<sup>th</sup> January 2015

*A true copy of the said complaint marked P3 and the proof of delivery marked P4 are enclosed herewith*

### **Complaint in detail**

7. The 1<sup>st</sup> Petitioner states that on or about 09<sup>th</sup> October 2000, whilst serving at the Customs fraud Prevention Directorate (Preventive Office) he

received a precise and credible information about a major revenue fraud running into 619 million rupees committed by the Colombo Dockyard Ltd (hereinafter referred to as CDL).

8. The 1<sup>st</sup> Petitioner states that the investigation conducted into this revenue fraud by the 1<sup>st</sup> Petitioner was completed on 12<sup>th</sup> October 2001 and the following were revealed.
  - a. The Colombo Dockyard Ltd had sold 21 marine craft manufactured with BOI concessions locally, an act of which is prohibited unless authorised by the BOI and Customs. The law requires that any enterprise which intends to sell any finished products manufactured with raw material imported on duty free basis for export trade, should first apply for permission from BOI, followed by Customs authorization and then pay all fiscal levies [Customs duties and other taxes] on the value of the goods so determined by the Customs on a Bill of Entry [Customs Declaration] furnished for Customs purposes as provided by Section 47 of the Customs Ordinance.
  - b. The CDL had not applied for BOI and Customs permission for the sale of 21 marine craft.
  - c. The CDL included the duty component in the sale price of the marine craft and recovered the total amount of fiscal levies from the buyers namely the Sri Lanka Ports Authority and the Sri Lanka Navy.
  - d. The CDL had misappropriated and or cheated the total fiscal levy component recovered from the buyers, amounting to a sum of Rs.619,483,827.00, thereby violating the provisions of Section 50A of the Customs Ordinance.
  - e. The contravention of the said provision of law attracts a minimum forfeiture of the value of the marine crafts. Further, under Section 129 of the Customs Ordinance, the CDL was also liable to be forfeited and impose a fine of (300%) treble the value of the marine crafts for being knowingly concerned in the fraudulent evasion of the fiscal levies.
9. The 1<sup>st</sup> Petitioner states that whilst the said Customs investigation was in progress, the CDL, conceding the violations referred to above, deposited a sum of Rs.94, 015,050.00 with Customs on two occasions [25<sup>th</sup> July 2001 and 15<sup>th</sup> August 2001]. These funds were to be applied against the final determination of the Customs inquiry and still remain in a special deposit account with Customs.

#### **Unlawful attempt made to cover-up the Fraud**

10. The formal Customs inquiry [Case No: P/Misc/93/2000] into this fraud was commenced on 07<sup>th</sup> February 2002. However it was not dealt with as required

by law but came to a standstill due to various forms of interference, resulting in inordinate delays and no action being taken against the CDL for over a period of two years.

11. Then on 05<sup>th</sup> March 2004, purportedly acting in terms of the Tax Amnesty Law [Act No 10 of 2003] the then Director General of Customs, Mr. Sarath Jayathilake, abusing his office granted an unauthorised tax amnesty to the CDL and terminated the said Customs Inquiry.
12. Then on 25<sup>th</sup> of June 2004, the 1<sup>st</sup> Petitioner challenged this illegal tax amnesty before the Court of Appeal [Case No: CA/1397/2004]. Further to this Court action the DGC was forced to withdraw the tax amnesty granted to CDL and to give an undertaking to resume and complete the Customs inquiry '**as expeditiously as possible**'. Further to the said undertaking on 09<sup>th</sup> February 2005 the said court action was withdrawn by the 1<sup>st</sup> Petitioner.

*True copy of the said Court Order in Case No: CA/1397/2004 marked **P5** is attached hereto*

**Petition CA/1413/2005 filed by Colombo Dockyard Ltd.**

13. The 1<sup>st</sup> Petitioner states the undertaking given to the Court of Appeal was not honoured and the Customs Inquiry was never completed as per the undertaking. Instead the CDL was permitted to challenge the Customs Inquiry before the Court of Appeal (**CA/1413/2005**) on 29<sup>th</sup> August 2005.
14. Then on 27 March 2009, after four years of filing of the said action, the Court of Appeal issued a Writ of Prohibition against the continuance of the Customs inquiry. The 1<sup>st</sup> Petitioner states that this decision was evidently flawed, as it had been obtained after having suppressed the Order made by the Court of Appeal on the same subject matter in CA/1397/2004, amongst other reasons. Therefore the DGC made several requests to the 6<sup>th</sup> Respondent, then the Attorney General, to Challenge the said Court Order but the 6<sup>th</sup> Respondent refused to accommodate the DGC's request.
15. Thereafter further to representations made to the then Solicitor General Mr Priyasath Dep on 13<sup>th</sup> May 2009 by the DGC and the 1<sup>st</sup> Petitioner, the Solicitor General challenged the decision of Court of Appeal in the Supreme Court [SC/SLA/100/2009] on 05<sup>th</sup> June 2009.

**Attorney General (6<sup>th</sup> Respondent), refuses to proceed with the action**

16. The 1<sup>st</sup> Petitioner states that even after filing the said action [SC/SLA/100/2009] the 6<sup>th</sup> Respondent showed no interest to proceed with the Court action. Instead he was determined to withdraw it and thereby permitting the Colombo Dockyard Ltd to evade any penal sanction being imposed on them for wilful defrauding of government revenue.
17. However, the 6<sup>th</sup> Respondent was prevented from doing so owing to an aggressive media exposure made by 'Sunday Leader' on 06<sup>th</sup> Sep 2009 against AG Mr Mohan Peiris's abuse of office of the AG.

*A true copy of the news item published in the 'Sunday Leader' on 06<sup>th</sup> Sep 2009 P6 is attached hereto*

18. The 1<sup>st</sup> Petitioner states that with this media exposure the 6<sup>th</sup> Respondent was forced to call for a high level conference at his office on 04<sup>th</sup> Nov 2009. It was attended by the 6<sup>th</sup> Respondent the AG, the then Solicitor General Mr Priyasath Dep, Deputy Solicitor General Mr Sanjay Rajaratnam, the then DGC Mr Sarath Jayathilake, Mr Z A M Jazeel [Director of Customs, Legal Affairs], Mr Peter Goonawardena [OIC, Legal Affairs] and the 1<sup>st</sup> Petitioner. At the said meeting, the 6<sup>th</sup> Respondent, in explicit terms advised the Customs to proceed with the Customs inquiry against the CDL. He informed further that he would defend the Customs Department's right to proceed with the inquiry, paving way for the invoking of the penal sanctions [Section 50A and 129] against the CDL and impose and collect additional revenue by way of further forfeitures being recovered for wilful defrauding of government revenue.
19. The 1<sup>st</sup> Petitioner states that the meeting held at the 6<sup>th</sup> Respondent's office and opinion expressed by him was merely a dishonest act adopted to deceive the DGC. Further to that meeting the 6<sup>th</sup> Respondent never took any action to proceed with the Supreme Court case and when the case was called for support for several times, the 6<sup>th</sup> Respondent kept on asking for further time.
20. The 1<sup>st</sup> Petitioner states that then on **10<sup>th</sup> May 2010**, after having waited for a period of almost one year, the 6<sup>th</sup> Respondent informed the DGC that he would withdraw the case on the next date on which it was due to be called in for support i.e 30<sup>th</sup> August 2010.

**True copy of the AG's letter dated 10<sup>th</sup> May 2010 marked P7 is attached hereto.**

21. The 1<sup>st</sup> Petitioner states that in the meantime on 24<sup>th</sup> May 2010 Mrs Sudharma Karunarathna assumed the office of the DGC. She took a firm stand against the deceitful and evasive action of the 6<sup>th</sup> Respondent, concerning the case. On 03<sup>rd</sup> August 2010 referring to the 6<sup>th</sup> Respondent's own conflicting stand expressed to the DGC at his chambers on 04<sup>th</sup> Nov 2009, the DGC informed the 6<sup>th</sup> Respondent that, considering the colossal revenue loss incurred by the government, it would be inappropriate to withdraw the Supreme Court action.

**True copy of the DGC's reply dated 03<sup>rd</sup> Aug 2010 marked P8 is attached hereto**

22. The 1<sup>st</sup> Petitioner states that the 6<sup>th</sup> Respondent was determined to act as he pleased, disregarding the written instructions given by the DGC to proceed with the case. And on 30<sup>th</sup> Aug 2010, the Attorney General withdrew the Supreme Court case (SC/SLA/100/2009), against the written instructions of the DGC, causing a colossal loss of 619 million rupees of revenue to the Government
23. Thereafter, to cover-up his fraudulent conduct, the 6<sup>th</sup> Respondent 'hand-delivered' a letter to the DGC on 01<sup>st</sup> Sep 2010, with a false date printed in it to read as 26<sup>th</sup> August 2010. And the said fake letter carried the following paragraph apparently to exculpate himself from the fraudulent act committed by him and to give an impression that the case was withdrawn with the prior consent of the DGC, this was to infer that the DGC was persuaded by the 6<sup>th</sup> Respondent to change her firm stand expressed in her letter dated 03<sup>rd</sup> Aug 2010.

*'... please be advised that the Petition of Appeal was filed in the ordinary course as a matter of caution only. I am of the considered view that there is no merit in pursuing this appeal and in the circumstances the said appeal would be withdrawn...'*

24. The 1<sup>st</sup> Petitioner states that this shameful act was tantamount to a sheer deception on the part of the AG, the 6<sup>th</sup> Respondent, who was under duty to uphold the Rule of Law and to discharge the functions of the office of the Attorney General faithfully. The Customs date stamp imprinted on the 6<sup>th</sup> Respondent's letter dated 26<sup>th</sup> August 2010, 'HAND DELIVERED' to the DGC confirms that the said letter in fact was received by the DGC on 01<sup>st</sup> September 2010

*True copy of the said letter sent by the AG to DGC dated 26<sup>th</sup> Aug 2010 marked P9 is attached hereto*

25. Thereafter on 17<sup>th</sup> October 2010, the 1<sup>st</sup> Petitioner challenged this blatantly fraudulent conduct of the 6<sup>th</sup> Respondent before the Supreme Court (SCFR/536/2010).

*A true copy of the said Petition (SCFR/536/2010) filed in Court marked P10 is attached hereto*

26. The 1<sup>st</sup> Petitioner states that further to this Court action the DGC Mrs Sudharma Karunaratne was called upon to submit her observations on the Petition filed in Court. The DGC stood firm and with unequivocal terms informed the Attorney General that the AG's letter dated 26<sup>th</sup> August 2010 hand delivered, was in fact received at her office on 01<sup>st</sup> Sep 2010, that was after the case was withdrawn by the AG on 30<sup>th</sup> Aug 2010. The 1<sup>st</sup> Petitioner states that this was an act of clear deception of the Supreme Court and the DGC by the 6<sup>th</sup> Respondent.

*True copy of DGC's observation marked P11 is attached hereto*

27. The 1<sup>st</sup> Petitioner states that, the case filed before the Supreme Court (SCFR/536/2010) was never allowed to be supported by adopting various delaying tactics by the Attorney General, for almost two years until the 6<sup>th</sup> Respondent was appointed to the Office of the Chief Justice on 15<sup>th</sup> January 2013.

28. The 1<sup>st</sup> Petitioner states that on 31<sup>st</sup> January 2013, the 6<sup>th</sup> Respondent appointed himself to hear his own case. However, further to objections raised the supporting of the matter was postponed for the following day (01<sup>st</sup> Feb 2013).

29. On 01<sup>st</sup> February 2013 a 2-Judge Bench [Eva Wanasundara J, (former AG) Sathya Hettige J (former Deputy Solicitor General)] was appointed by the 6<sup>th</sup> Respondent to hear the case. And the said Bench summarily dismissed the Rights Application of the 1<sup>st</sup> Petitioner on the basis that the 1<sup>st</sup> Petitioner had challenged a Judicial Act that did not amount to violation of fundamental rights of the 1<sup>st</sup> Petitioner and denied permission to support it.

#### **Failure of Bribery Commission to perform the Office as required by Law**

30. The 1<sup>st</sup> Petitioner states that under the notion of Rule of Law the Attorney General is required at all times to defend and uphold the Rule of Law and the



Chief Justice is required to respect the trust and confidence placed in the Judiciary by the people of Sri Lanka. However, this tradition was seriously undermined by the 6<sup>th</sup> Respondent by his proven deceitful and subservient conduct and thereby ridiculing the entire justice system in the Country in the eyes of the people

31. The 1<sup>st</sup> Petitioner states that despite the plausible complaint was made by the 2<sup>nd</sup> Petitioner to the 1<sup>st</sup> Respondent on 19<sup>th</sup> Jan 2015 against the 6<sup>th</sup> Respondent, urging to impound the Passport of the 6<sup>th</sup> Respondent, the 1<sup>st</sup> Respondent has absolutely failed to act as required by law and to take necessary steps to stop the 6<sup>th</sup> Respondent from absconding.
  
32. The 1<sup>st</sup> Petitioner states that he is aware that media personnel had contacted the 1<sup>st</sup> Respondent and inquired about the complaint made against the 6<sup>th</sup> Respondent by the 2<sup>nd</sup> Petitioner, but the 1<sup>st</sup> Respondent has informed them that there was no such complaint received against the 6<sup>th</sup> Respondent. Therefore, on 28<sup>th</sup> January 2015 the 2<sup>nd</sup> Petitioner visited the Corruption Commission and had met the 5<sup>th</sup> Respondent, as the 1<sup>st</sup> Respondent was unavailable. And when inquired about the complaint made against the 6<sup>th</sup> Respondent, the 5<sup>th</sup> Respondent admitted the receipt of the complaint against the 6<sup>th</sup> Respondent and informed the 2<sup>nd</sup> Petitioner that it has been duly registered (BA/138/2015) and was forwarded to the 1<sup>st</sup> Respondent for follow up action but he was unaware as to what has happened to the Complaint thereafter.
  
33. The 1<sup>st</sup> Petitioner states that failure on the part of the 1<sup>st</sup> Respondent to enforce the law against the 6<sup>th</sup> Respondent and bringing him to justice forthwith amounts to violation of the trust and confidence placed in the Corruption Commission by the people of Sri Lanka, as the 1<sup>st</sup> Respondent's inaction has afforded an opportunity to the 6<sup>th</sup> Respondent to abscond and evade arrest and to flee the country, at his free will before any enforcement action is being taken against him. Therefore the 1<sup>st</sup> Petitioner states that the failure on the part of the 1<sup>st</sup> Respondent is unlawful, inapt, ultra vires and abuse of process/power as much as:
  - a. the said inaction offends and violates the fundamental expectations of the lawmakers in enacting of the Bribery Act with specified penal sanctions for offences of corruption.

b. the said inaction has been apparently influenced by irrelevant considerations and probably made with collusion with the 6<sup>th</sup> Respondent.

34. The 1<sup>st</sup> Petitioner, reserves the right to furnish any further material as the Petitioner might be able to obtain including the certified copies, which may pertain to the aforesaid matters but not currently available in further proof thereof.

35. The Affidavits by 1<sup>st</sup> and 2<sup>nd</sup> Petitioners are appended hereto in support of the averments contained herein.

36. The Petitioners states that they have not invoked the jurisdiction of the Court of Appeal previously in respect of the matters pleaded herein and plead that documents **P1** to **P11** be deemed to be part and parcel hereof.

**WHEREFORE**, the Petitioners pray that the Court of Appeal would;

- a. issue Notices on the Respondents;
- b. issue a Writ in the nature of a Writ of **Mandamus** compelling the 1<sup>st</sup> Respondent to initiate a formal investigation/inquiry against the 6<sup>th</sup> Respondent on the plausible charge of corruption made against him as expeditiously as possible;
- c. Grant **Interim Relief** with issuance of direction to the 1<sup>st</sup> Respondent to have the passport of the 6<sup>th</sup> Respondent impounded forthwith until the final determination of this Application
- d. grant costs; and
- e. grant such other and further relief and/or declaration as to Your Lordships' Court shall seem fit and meet.