

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

In the matter of an application under **Article 140** of the  
Constitution read with **Section 24** of the Commission to  
Investigate Allegations of Bribery or Corruption Act No 19 of  
1994 for a Mandate in the nature of Writ of **Mandamus**

Nagananda Kodituwakku  
99, Subadrarama Road  
Nugegoda

**Petitioner**

**Vs**

**SC (Writ) Application No: /2015**

1. Commission to Investigate Allegations of Bribery or Corruption  
No 36 Malalasekera Mawatha,  
Colombo 07
2. D.J.De S. Balapatabendi (Chairman)  
Commission to Investigate Allegations of Bribery or Corruption  
No 36 Malalasekera Mawatha,  
Colombo 07
3. L K Wimalachandra  
Commission to Investigate Allegations of Bribery or Corruption  
No 36 Malalasekera Mawatha,  
Colombo 07
4. Jayantha Wickramaratne (Member)  
Commission to Investigate Allegations of Bribery or Corruption  
No 36 Malalasekera Mawatha,  
Colombo 07
5. Dilrukshi Wickramasinge (Director General)  
Commission to Investigate Allegations of Bribery or Corruption  
No 36 Malalasekera Mawatha,  
Colombo 07
6. Mohan Peiris  
3-14D, Kinsey Road  
Colombo 8

**Respondents**

To: **THE HON' CHIEF JUSTICE AND THE OTHER HON' JUDGES OF THE SUPREME COURT OF  
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

27<sup>th</sup> May 2015

The Petition of the Petitioner above-named appearing in person state as follows.

**Parties to the Application**

1. The Petitioner is an Attorney at Law and Solicitor (UK), the former Head of the Customs Revenue Task Force Directorate, residing in Sri Lanka as captioned above and has *locus standi* in the above matter as pleaded.
2. The 1<sup>st</sup> Respondent is the Commission to Investigate Allegation of Bribery or Corruption, the 2<sup>st</sup> Respondent is the Chairman of the Commission, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents are members of the Commission the 5<sup>th</sup> Respondent is the Director General of the Commission and the 6<sup>th</sup> Respondent is the former Attorney General and the former Legal Advisor to the President and the Cabinet of Ministers.

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

3. The Petitioner states that in October 2000, the Customs Officer Mr T R Rathnasiri, of the Customs Preventive Directorate, investigated into a major revenue fraud running into over 600 million rupees against the suspect, the Colombo Dockyard Ltd (hereinafter referred to as CDL), and further to establishment of a prima facie Customs case the formal Custom Inquiry [Case No: P/Misc/93/2000], was resumed on 07<sup>th</sup> February 2002 against the suspect CDL.
4. However, hearing of this Customs case has been inordinately delayed due to undue interferences and two Court cases. And finally further to an action instituted by the Director General of Customs (hereinafter referred to as the DGC) it went to Supreme Court (SC/Spl/100/2009) in June 2009.

5. The Petitioner states that this Court action (SC/Spl/100/2009) was filed for the DGC, by the then Solicitor General Priyasad Dep, as a result of the 6<sup>th</sup> Respondent in his capacity of the Attorney General, disregarding the representations made to him by the DGC, including the written representation dated 13<sup>th</sup> May 2009.

*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.*

6. The 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 the colossal loss of revenue of over 600 millions that would be incurred by the Customs Department in the event of the withdrawal of the case.

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

7. The Petitioner states that the 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, requiring the CIABOC (Commission to Investigate Allegations of Bribery or Corruption) to inquire into such actions, in terms of Section 3 of the Commission to Investigate Allegations of Bribery or Corruption Act. Therefore, after the new administration was installed under the President Maithreepala Sirisena, the Petitioner formally made a complaint of criminal offence of corruption against the 6<sup>th</sup> Respondent to the Commission on 18<sup>th</sup> January 2015. This was done by an electronic mail sent from London to the email address given in the website of the Corruption Commission, and it was followed by a hardcopy of the same delivered by Registered post on 20<sup>th</sup> January 2015.

*A true copy of the said complaint dated 18<sup>th</sup> Jan 2015 marked P3 and the proof of delivery marked P4 are enclosed herewith*

**Background of the Customs case No: P/Misc/93/2000**

8. The Petitioner states that 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 and came to a standstill due to various forms of interferences, resulting in inordinate delays for over a period of two years.
9. The Petitioner states that 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 suspect, the CDL and terminated the said Customs Inquiry.
10. The Petitioner states that on 25<sup>th</sup> of June 2004, this illegal tax amnesty was challenged before the Court of Appeal [Case No: CA/1397/2004] by Mr T R Ratnasiri, the officer who had initiated the fraud inquiry. Further to this Court action the then DGC was forced to withdraw the tax amnesty granted to CDL and to give an undertaking to the Court, to **'resume and complete the Customs inquiry as expeditiously as possible'**. Further to the said undertaking given on 09<sup>th</sup> February 2005 the said court action was withdrawn by the investigating officer.

*True copy of the said Court Order in Case No: CA/1397/2004 dated on 09<sup>th</sup> Feb 2005, marked P5 and the affidavit dated 26<sup>th</sup> May 2015 furnished by Mr T R Ratnasiri marked P6 are attached hereto*

**The Suspect, CDL filing action against the Customs**

11. The Petitioner states that the Respondents in the case never honoured the undertaking given to the Court of Appeal on 09<sup>th</sup> Feb 2005 and the Customs Inquiry was not resumed. In the meantime the CDL, the suspect challenged the holding of the Customs Inquiry before the Court of Appeal **(CA/1413/2005)** on 29<sup>th</sup> August 2005.
12. The Petitioner states that on 27 April 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 Petitioner states that this decision was evidently

flawed, as it contained relief not prayed for amongst other things and 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.

*True copy of the said Court Order dated 27<sup>th</sup> April 2009 in Case No: CA/1413/2005 marked P7 is attached hereto*

13. The Petitioner states that 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 officer who initiated the fraud inquiry, the Solicitor General challenged the decision of the Court of Appeal in the Supreme Court [SC/SLA/100/2009] on 05<sup>th</sup> June 2009.

**6<sup>th</sup> Respondent (the then AG), refusing to proceed with the action**

14. The 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 apparently he was determined to withdraw it and thereby permitting the suspect, the Colombo Dockyard Ltd to evade any penal sanctions being imposed on them for wilful defrauding of government revenue.
15. The Petitioner states that 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 the 6<sup>th</sup> Respondent'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 P8 is attached hereto*

16. The Petitioner states that with this media exposure the 6<sup>th</sup> Respondent was forced to call for a high level conference at his Chambers on 04<sup>th</sup> Nov 2009. It was attended by 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 Mr T R Ratnasiri, the officer who initiated the case. 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 right of the Customs Department to proceed with the inquiry, paving way for the invoking of penal sanctions [Section 50A and 129] against the CDL

(to impose and collect additional revenue by way of further forfeitures for wilful defrauding of government revenue).

17. The Petitioner states that the opinion expressed by the 6<sup>th</sup> Respondent at the meeting held on 04<sup>th</sup> Nov 2009 was merely a dishonest act adopted to deceive the Customs. Thereafter, the 6<sup>th</sup> Respondent took no action to proceed with the Supreme Court case and kept on asking for further time whenever the case was called for support.
18. The Petitioner states that, after having waited for a period of almost one year, the 6<sup>th</sup> Respondent informed the DGC on 10<sup>th</sup> May 2010, 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 P9 is attached hereto.*

19. The 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 [SC/SLA/100/2009]. On 03<sup>rd</sup> August 2010 referring to the 6<sup>th</sup> Respondent's own conflicting stand expressed at his chambers on 04<sup>th</sup> Nov 2009, the new 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 P10 is attached hereto*

20. The Petitioner states that apparently, 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.
21. The Petitioner states that thereafter, in order 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 fictitious 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 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...'*

22. The 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, according to his Constitutional Oath. 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 P11 is attached hereto***

23. The Petitioner states that thereafter on 17<sup>th</sup> October 2010, the Officer who initiated the case, Mr T R Ratnasiri, 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 P12 is attached hereto***

24. The 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 was hand delivered and in fact received at her office on 01<sup>st</sup> Sep 2010. That was after the AG withdrew the case on 30<sup>th</sup> Aug 2010. The 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 P13 is attached hereto***

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

26. The Petitioner states that on 31<sup>st</sup> January 2013, the 6<sup>th</sup> Respondent, appointed himself to hear his own case (SCFR/536/2010). However, further to objections raised for the Petitioner Customs Officer, Mr T R Ratnasiri, the supporting of the matter was postponed for the following day (01<sup>st</sup> Feb 2013) before another Bench.
27. The Petitioner states that on 01<sup>st</sup> February 2013 a 2-Judge Bench [Eva Wanasundara J, (former AG) Sathya Hettige J (former Deputy Solicitor General)] were appointed by the 6<sup>th</sup> Respondent to hear the case. And the said Bench summarily dismissed the Fundamental Rights Application filed by the Customs Officer Mr T R Ratnasiri, on the basis that he had challenged a Judicial Act and not an Executive or Administrative act.

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

28. The 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 conduct and thereby ridiculing the entire justice system in the eyes of the people.
29. The Petitioner states that despite the plausible complaint (with a request to impound the travel document) made by me to the Corruption Commission against the 6<sup>th</sup> Respondent on 19<sup>th</sup> Jan 2015, the Corruption Commission absolutely failed to act as required by law. The Petitioner states further that the Corruption Commission has failed even to acknowledge the receipt of the complaint.
30. The Petitioner states that the failure on the part of the 1<sup>st</sup> Respondent and/or 2<sup>nd</sup> to 5<sup>th</sup> Respondents to act as required by law against the 6<sup>th</sup> Respondent amounts to violation of the trust and confidence placed in the Corruption Commission by the people of Sri Lanka. The Petitioner states that the Corruption Commission's inaction has afforded an opportunity to the 6<sup>th</sup> Respondent to abscond and evade arrest, at his free will before any enforcement action is being taken against him. Therefore The Petitioner states that the failure on the part of the 1<sup>st</sup> to 5<sup>th</sup> Respondents is unlawful, inapt, ultra virus and abuse of process/power as much as the said failure offends and violates the fundamental expectations of the lawmakers in enacting of the Bribery Act and Commission to



Investigate Allegations of Bribery or Corruption Act No 19 of 1994 which specify penal sanctions for the Offences of Corruption.

31. The Petitioner states that failure on the part of the Corruption Commission to act as required by law was later challenged in the Court of Appeal (Case No. CA/Writ/65/2015) on 02<sup>nd</sup> February 2015 and due to a jurisdictional issue it was withdrawn on 11<sup>th</sup> March 2015.

*True copy of the Court Order dated 11<sup>th</sup> March 2015 permitting withdrawal marked P14 is attached hereto*

32. The Petitioner states further that thereafter a Writ Application (SC/Writ/01/2015) on the matter was filed on 17<sup>th</sup> March 2015 in the Supreme Court, in which the Writ Jurisdiction against the CIABOC (Commission to Investigate Allegation of Bribery or Corruption) is vested. However it was dismissed on 30<sup>th</sup> April 2015 on the basis that the Chairman of the Commission was not under duty to initiate a formal investigation/inquiry against the 6<sup>th</sup> Respondent and that there was no evidence produced in Court to demonstrate that the Commission had refused to act on the complaint made against the 6<sup>th</sup> Respondent.

*True copy of the said Court Order dated 30<sup>th</sup> April 2015 marked P15 is attached hereto*

33. The Petitioner states that further to the said Order on 05<sup>th</sup> May 2015, a written request was served on the 1<sup>st</sup> Respondent, to inform the Petitioner within 14 days, whether any formal inquiry on the plausible complaint dated 18<sup>th</sup> January 2015 against the 6<sup>th</sup> Respondent has been initiated. It was also notified that the failure to respond to the said request within the specified period would be considered as confirmation that the Commission would not proceed with the complaint made against the 6<sup>th</sup> Respondent.

*True copy of the said communication sent to the Corruption Commission dated 05<sup>th</sup> May 2015 with the proof of posting marked P16 and P17 are attached hereto*

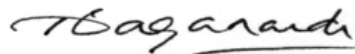
34. The Petitioner states that there was no reply whatsoever received from the 1<sup>st</sup> Respondent, in response to the communication dated 05<sup>th</sup> May 2015. Therefore

it is presumed that the Commission has failed to act as required by law on the plausible complaint made against the 6<sup>th</sup> Respondent on 18<sup>th</sup> January 2015.

35. The Petitioner states that, he 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.
36. The Affidavits by the Petitioner and the Customs Officer T R Ratnasiri are appended hereto in support of the averments contained herein.
37. The Petitioner states that he has invoked the jurisdiction of the Supreme Court previously in respect of the matters pleaded herein (referred to in paragraph 32 above) and pleads that documents **P1 to P17** be deemed to be part and parcel hereof.

**WHEREFORE**, the Petitioner pray that the Supreme Court would;

- a) Issue Notice on the Respondents;
- b) Issue 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 costs and
- d) Grant such other and further relief and/or declaration as to Your Lordship's Court shall seem fit and meet.



Petitioner in Person

Nagananda Kodituwakku (Attorney-at-Law) & Solicitor (UK)

