

**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***

1. Nagananda Kodituwakku
99, Subadrarama Road
Nugegoda

Petitioner

Vs

SC (Writ) No: /2016

1. Commission to Investigate Allegations of Bribery or Corruption
No 36 Malalasekera Mawatha,
Colombo 07
2. T B Weerasuriya (Chairman) of the Commission
3. W Lal Ranjith Silva (Member) of the Commission
4. Chandranath Nevelle Guruge (Member) of the Commission
5. Dilrukshi Wickramasinge (Director General) of the Commission
6. K Sripavan
Chief Justice
Supreme Court of Sri Lanka
Colombo 12
7. Shirani Bandaranayake
170, Lake Drive
Colombo 8
8. Mohan Peiris
3-14D, Kinsey Road
Colombo 8
9. Sarath N Silva
18/171, Muhandiram E D Dabare Mawatha
Colombo 5

10. Vijith K Malalgoda
President of the Court of Appeal
Court of Appeal of Republic of Sri Lanka
Colombo 12

11. Sanjaya Rajaratnam
Addl. Solicitor General
Attorney General's Department
Colombo 12

12. Mahinda Rajapakse
Member of Parliament
Parliamentary Complex
Parliament Approach Road
Sri Jayewardenepura

13. Geoffrey Alagaratnam
The President of the Bar Association
153, Mihindhu Mawatha
Colombo 12

14. The UN High Commissioner for Human Rights
Palais des Nations
CH-1211, Geneva 10
Switzerland

Respondents

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

On this **28th March 2016**

The **Petition** of the Petitioner above-named appearing in person states as follows:-

Parties to the Application

1. The Petitioner is a public interest litigation activist and also a lawyer by profession in Sri Lanka and in the UK.
2. The **1st** Respondent is the Commission to Investigate Allegation of Bribery or Corruption (hereinafter sometime referred as Commission), the **2st** Respondent is the Chairman of the Commission, the **3nd** and **4rd** Respondents are the members to the Commission, the **5th** Respondent is the Director General of the Commission, **6th** Respondent is the **44th** Chief Justice

of the Republic of Sri Lanka (Jan 2015 to date), **7th** Respondent is the **43rd** Chief Justice of Sri Lanka (May 2011 –Jan 2015), **8th** Respondent is the person who unlawfully occupied the office of the Chief Justice from Jan 2013 to Jan 2015, **9th** Respondent is the **41nd** Chief Justice of the Republic of Sri Lanka (Sep 1999 – June 2009) **10th** Respondent is the President of the Court of Appeal (Sep 2014 to date), **11th** Respondent is an Additional Solicitor General of the Attorney General’s Department, **12th** Respondent is the former Executive President of Sri Lanka (Nov 2005 - Jan 2015), **13th** Respondent is the President of the Bar Association, the Professional Body of the Lawyers in Sri Lanka, **14th** Respondent is the UN High Commissioner of Human Rights (OHCHR).

The Law relating to Corruption in the Republic of Sri Lanka

3. The Petitioner states that the Bribery Law provides that any person holding any public office does any act to confer a wrongful or unlawful benefit, favour or advantage on himself or to another person, or that any wrongful or unlawful benefit, favour or advantage will be conferred on any person does, or forbears to do, any act, which he is empowered to do by virtue of his office, participates in the making of any decision by virtue of his office as a person holding public office induces any other person, by the use, whether directly or indirectly, of his office to perform, or refrain from performing, any such act, shall be guilty of the **offence of corruption** and shall be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one hundred thousand rupees or to both such imprisonment and fine (Section 70 of the Bribery Act).

Representative Democracy and Judicial Power of the people

4. The Petitioner states that the Constitution of the Republic of Sri Lanka recognizes the Government of Sri Lanka as a ‘Representative Democracy’ and vests immutable judicial power of the people in the judiciary to ensure that the other two organs do respect their Constitutional obligations to the people. The people’s judicial power so vested in the Judiciary is to be exercised purely on trust [Article 4(3)], which shall be exercised independently, subject to the Supreme Law of the Land, the Constitution. Judges are not above the law and on being appointed to the Judiciary do take a oath under the 4th Schedule of the Constitution to perform their judicial duty faithfully and according to the Constitution and the Rule of Law.

Constitution & Commonwealth Principles on three organs of the Government

5. The Petitioner states that the Constitution of the Republic of Sri Lanka requires the judges to uphold, vindicate and enforce the judicial power of the people (Article 105), and envisages the judiciary to be vibrant, upright, and absolutely independent in the administration of people's judicial power without any fear or favour and without compromising their integrity. Therefore the people expect the Judiciary to be a symbol of hope for the people, particularly at a time when the people's sovereign rights are being openly abused by the other two organs of the government.
6. The Petitioner states that in the former British Colonies, including Sri Lanka, there have been serious issues concerning the independence and integrity of the justice system as it has been found that the Executive holds a firm grip on the judiciary where democracy is unworkable. This has compelled the British Commonwealth to formulate principles on all three branches of the Government to be adopted by all member Nations with due respect to the separation of powers.
7. The Petitioner states that since 1948, Sri Lanka too has been a member of the Commonwealth of Nations and has ratified the Commonwealth Latimer House Principles on the three branches (Legislature, Executive and Judiciary) of the Government, which are the guarantors in their respective spheres of the rule of law. These branches of the Government are required to promote and protect fundamental rights of the people and the entrenchment of good governance, based on the highest standards of honesty, probity and accountability.

Independence and Accountability of the Judiciary

8. The Petitioner states that the Commonwealth Principles also underline the importance of an independent, impartial, honest and competent judiciary, which is integral to upholding the Rule of Law, engendering public confidence and dispensing of justice. And it identifies the importance of the functions of the judiciary in interpreting and applying national constitutions and legislations in consistent with International Human Rights Conventions and International Law, to the extent permitted by the domestic law of each Commonwealth Nation and to secure these aims and provide *inter alia* the following to be adopted by all Member Nations.
 - a. Interaction, if any, between the Executive and the Judiciary should not compromise judicial independence.

- b. Establishment of an independent, effective and competent legal profession, which is fundamental to the upholding of the rule of law and the independence of the judiciary.
- c. Judges to be held accountable to the Constitution and to the law, which the Judges must apply honestly, independently and with integrity. The principles of judicial accountability and independence underpin the public confidence in the judicial system and the importance of the judiciary as one of the three pillars upon which a responsible Government relies.
- d. The Criminal Law and contempt proceedings should not be used to restrict legitimate criticism of the performance of judicial functions.

A true copy of the Commonwealth of Nations Latimer House Principles concerning the Independence of the Judiciary marked P1 is attached hereto

Judicial Corruption effectively destroys the Rule of Law & Good Governance

- 9. However, in Sri Lanka, the Petitioner states that over a period of time, as also closely observed by the Bar Association of Sri Lanka and the people, there exists corruption in an unimaginable scale in the judiciary, intentionally ignoring and violating its Constitutional obligations and the Commonwealth Latimer House principles. This is to favour the Executive and/or favour or to the advantage of the judges themselves at the expense of people's Judicial power. The Judiciary apparently has been compromising its integrity, causing an enormous damage to the due observance of the doctrine of separation of powers, effectively nullifying the Rule of Law and Democratic Governance in the Republic of Sri Lanka. The Petitioner sets out below several plausible and prima facie cases of judicial corruption involving the judges in the Superior Court System of Sri Lanka, which amount to commission of criminal offence of 'Corruption' as defined in the Section 70 of the Bribery Act. The Petitioner states that these abuses have been already reported to the 1st Respondent.

Statement issued by the President, Bar Association on 28th Nov 2015, expressing its concerns about the state of the Judiciary failing to win the confidence of the people resulting in an erosion of confidence in the system as a whole marked P2 is attached hereto

Judicial Corruption involving the 9th Respondent favouring 12th Respondent

10. The Petitioner states that on or about 18th Oct 2014, in an unprecedented move, the 9th Respondent, openly confessed to the people and conceded the responsibility for abusing the office of the Chief Justice for perverting the cause of justice in the "Helping Hambantota" case, to allow 12th Respondent to contest the Presidential Election in 2005. In a voluntary confession made to BBC Sinhala Service, the 9th Respondent admitted delivering the judgement in the case favouring the then Executive President, the 12th Respondent. The Petitioner states that this improper act by the 9th Respondent amounts to commission of a criminal offence of corruption under Section 70 of the Bribery Act, requiring the 1st Respondent to conduct a credible and independent investigation in terms of Section 4 of the 'Commission to Investigate Allegation of Bribery or Corruption Act', 3 No. 19 of 1994.

A true copy of 'the Sunday Times' news report dated 26th Oct 2014, on 9th Respondent's confession of abuse of the office of Chief Justice to favour 12th Respondent marked P3 is attached hereto.

Judicial Corruption involving 6th & 7th Respondents favouring President Rajapakse

11. The Petitioner states that when the 18th Amendment Bill was challenged in the Supreme Court on 31st Aug 2010, the, then Chief Justice Asoka de Silva did not take part at the determination hearing (SC/SD/01/2010). Instead he had appointed a Bench consisting of the 6th Respondent, 7th Respondent and three other Judges to hear and determine the consistency of the 18th Amendment with the Constitution. The Petitioner states that by the time, husband of the 7th Respondent, Pradeep Kariyawasam had been appointed to the office of the Chairman of the National Savings Bank by the 12th Respondent and apparently there had been good understanding between the 7th Respondent and the 12th Respondent, the then Executive President.
12. The Petitioner states that the 18th Amendment Bill was challenged by the citizens on the basis, *inter alia*, that the provisions contained in the Clause 5 of the Bill (replacing the 'Constitutional Council' with a 'Parliamentary Council' giving the 12th Respondent absolute power over appointment of judges to the Superior Court System) have the effect of interfering with the Independence of the Judiciary, affecting the judicial power of the people that it exercises under Article 4(c) of the Constitution, while also affecting the sovereignty

in the People, which includes judicial power enshrined in Article 3 of the Constitution, which is an entrenched provision, that cannot be amended, without people's approval is obtained at a Referendum in terms of Article 83 of the Constitution.

13. The Petitioner states that when the 18th Amendment Bill was challenged in the Supreme Court (SC/SD/01/2010), the then Attorney General, the 8th Respondent, argued that the objective of the aforementioned 18th Amendment was only to make 'consequential amendments' brought about by the 'change of the terminology' to the body known as the 'Constitutional Council' for the term 'Parliamentary Council' referred to in the proposed Amendment.
14. The Petitioner states that on the other hand, for the citizens who challenged the Bill, it was argued that the Constitutional Council was established with the intention of safeguarding the independence of the judiciary and the purpose and the objective of the introduction of the Constitutional Council was to place a restriction on the discretionary powers of the President in appointing judges. The Petitioner states that what Sri Lanka experienced after the 18th amendment was passed exactly what the Petitioners had argued in this case against the abolition of the Constitutional Council that permitted the 12th Respondent to have a complete control over the judiciary undermining its independence.
15. The Petitioner states that the Supreme Court, despite the fact that it was patently clear that the abolition of the Constitutional Council would empower the 12th Respondent with unfettered power to have a firm control over the Judiciary with no respect to the doctrine of separation of powers, held in favour of the then President, the 12th Respondent and ruled that it did not violate the Judicial power of the people (Article 3) and therefore a mandate from the people at a Referendum (in terms of Article 83 of the Constitution) was not required.

*A true copy of the Supreme Court's Determination (SC/SD/01/2010) on 31st Aug 2010 marked **P4** is attached hereto.*

16. The Petitioner reiterates that the said ruling given by the Bench headed by the 7th Respondent and in which the 6th Respondent also served as a member, conferred a unlawful favour to the Executive President, the 12th Respondent to have a firm control over the Judiciary, having fully known that such a determination would effectively erode the Rule of Law and the Independence of the Judiciary. The Petitioner states that the said betrayal of the people's judicial power by the 6th and 7th Respondents amounts to undermining people's judicial power and also amounts to commission of a criminal offence of corruption under Section 70 of the Bribery Act, requiring the 1st Respondent to conduct

a credible and independent inquiry in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.

Unlawful appointment of the 8th Respondent to the office of the Chief Justice

17. The Petitioner states that on 15th Jan 2013, the 8th Respondent, one of the closest allies of the then Executive President, the 12th Respondent (advisor to the then Cabinet of Ministers and the Executive President), was appointed to the office of the Chief Justice after removing the 7th Respondent from the office unlawfully. This was a clear move to further consolidate 12th Respondent's control over the Judiciary.

Satyagraha staged by the Petitioner to protect the Judicial Independence

18. The Petitioner states that all law-abiding citizens of Sri Lanka rose against this unlawful move and the launched protest campaign led by the Bar Association of Sri Lanka. The Petitioner himself staged a solo nonviolent *Satyagraha* at the Supreme Court premises against the dictatorial move to oust the 7th Respondent from office of the Chief Justice by the then Executive President, the 12th Respondent and also to demonstrate solidarity with the other social groups that fought for the judicial independence.

A true copy of the image of the said Satyagraha staged by the Petitioner on 04th Dec 2012 at the Supreme Court Complex marked P5 is attached hereto

19. The Petitioner states that the Bar Association of Sri Lanka (BASL) and independent media refused to attend the ceremonial sitting welcoming the 8th Respondent to the office of the Chief Justice. The Petitioner states that even the UN High Commissioner for Human Rights had expressed concerns about 8th Respondent's independence and integrity. Further the International Commission of Jurists (ICJ) too had condemned 8th Respondent's appointment, describing it as a 'further assault on the independence of the judiciary in Sri Lanka' by the then Executive President, the 12th Respondent.

A true copy of extract of the statement made by UN Human Rights High Commissioner on 8th Respondent's appointment to the office of the Chief Justice, as published in 'The Island' dated 18th Jan 2013 marked P6 and statement dated 15th Jan 2013 issued by the ICJ marked P7 are attached hereto

Judicial corruption committed by the 8th Respondent favouring 12th Respondent

20. The Petitioner states that sometime thereafter on 03rd Nov 2014 the 12th Respondent referred two questions, 'concerning purely his private interests' to the 8th Respondent, seeking an opinion of the Supreme Court as to whether there was any impediment for the 12th Respondent to contest for a further term. Obviously these two questions lacked the

primary requirement of 'public importance', which is a prerequisite to invoke the Article 129 of the Constitution, for the Supreme Court to accept them for consideration and to express its opinion. The Petitioner states, the 8th Respondent ignoring all these relevant facts, abused the office of the Chief Justice to accept the two questions referred to Court by the 12th Respondent as a '**Matter of Public Importance**' and on 10th November 2014 ruled with 6th Respondent and all the other Judges in the Supreme Court agreeing, in favour of 12th Respondent in very submissive language which is reproduced as follows.

"... Thus Your Excellency shall exercise your right and power vested in you by virtue of Article 31 (3A) (a) (i) of the Constitution and seek re-election for a further term and there exists no impediment for Your Excellency to exercise the right and powers accorded to you under the Constitution to offer yourself for a further term..."

21. The Petitioner states that the said opinion was expressed by the Supreme Court after having completely denied the citizens of Sri Lanka whose judicial power it exercised on trust, any opportunity whatsoever to challenge the said two questions and the Petitioner states that the 8th Respondent abused the office of the Chief Justice in such a degrading manner purely to confer a favour and/or benefit to the 12th Respondent to contest for the office of the Executive President for a further term.

*A true copy of the certification of the said opinion expressed by the 8th Respondent on 10th Nov 2014 with all other judges agreeing marked **P8** is attached hereto*

22. The Petitioner further states that the said improper conduct of the Bench comprised of the 8th Respondent and the 6th Respondent was a clear betrayal and a total surrender of people's judicial power to the 12th Respondent. The Petitioner states that the said abuse of office by the 8th Respondent and the 6th Respondent to confer a benefit to the Executive President, the 12th Respondent was a clear violation of Section 70 of the Bribery Act, requiring the 1st Respondent to conduct a credible and independent inquiry into the alleged judicial corruption in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.

Judicial corruption involving the 10th Respondent favouring 12th Respondent

23. The Petitioner states that after having discarded the Constitutional Council, the then Executive President, the 12th Respondent made a series of improper appointments to the Superior Court System, including the appointment of the then Additional Solicitor General, Vijith K Malalgoda to the Office of the President of the Court of Appeal on **09th Sep 2014**.

The Petitioner states that the Bar Association had raised its serious concerns against making such improper appointments including the appointment of the 10th Respondent.

A true copy of the objections raised against the said appointment by the Bar Association published in the 'Sunday Times' dated 14th Sep 2014 marked P9 is attached hereto.

24. The Petitioner states that few months thereafter, on **20th November 2014** the 12th Respondent, issued a proclamation declaring his intention of holding the Presidential Election, seeking a mandate afresh for a third term. Nominations were called from the prospective candidates and accepted on **08th December 2014**, including the nominations from the former Executive President, the 12th Respondent.
25. The Petitioner states that the 18th Amendment to the Constitution does not provide an expressed provision to the effect that the Amendment made to Article 31 of the Constitution shall also apply to the incumbent President elected to office before the law the was amended, which stipulates only two terms to hold office, therefore the Section 6 of the Interpretation Ordinance effectively denied the application of the amended law to the 12th Respondent.

The Petitioner challenging the nomination of the 12th Respondent for a 3rd Term

26. The Petitioner states that therefore, being a public interest litigation activist, on 15th Dec 2014 he filed a Writ Application before the Court of Appeal (CA/434/2014) challenging the candidacy of the former President, the 12th Respondent for a 3rd term, wherein the Petitioner had prayed for an **interim relief**, for the suspension of the Presidential Election until the final determination of the said Writ Application. Considering the public interest and urgency involved in the case, the Petitioner requested to support his Petition on a date prior to commencement of the Court vacation, which was due to commence on 20th Dec 2014.

A true copy of the Petition (CA/434/2014) and the Motion filed in Court dated 15th Dec 2014 marked P10 and P11 are attached hereto

Disappearance of the Petition (CA/434/2015) from the Court of Appeal Registry

27. The Petitioner states that thereafter, the Petition duly acknowledged by the Registry of the Court of Appeal, was suddenly disappeared from the Court Registry (probably for the first time). It was apparently removed by some concerned party close to the 12th Respondent with a view to stop the said Petition being supported and thereby to favour the then Executive President, the 12th Respondent whose approval ratings were appeared to be very high at the time.

28. The Petitioner states that, at the time, the 8th Respondent occupied the office of the Chief Justice unlawfully and the 10th Respondent held the office of the President of the Court of Appeal, both of whom were appointees of the 12th Respondent, which had been heavily criticized by the Bar Association. The Petitioner states that in this background he strongly suspected the apparent involvement of these two Respondents in the disappearance of the Petition (CA/434/2014) filed in Court.
29. The Petitioner states that when he inquired from the Registrar about this unacceptable state of affairs at the Court of Appeal Registry, the Registrar requested him to file the Petition afresh. Accordingly, on 19th December 2014, the Petitioner filed a further copy of the Petition along with a Motion setting out the circumstances under which the Petition had gone missing. And considering the National Interest and urgency involved in this case, the Petitioner once again requested the permission of the Court to support the Petition either on 19th, 24th or 26th of Dec 2014. However, the Petitioner states that 10th Respondent completely ignored the request made to support this Writ Application, obviously to favour the Executive President, the 12th Respondent to contest the election unhindered.

A true copy of the Motion dated 19th Dec 2014 filed in the Registry of the Court of Appeal marked P12 is enclosed.

30. The Petitioner states that as the time went by, the Opposition campaign gathered momentum and the 12th Respondent was gradually facing a formidable challenge from the main opposition candidate Maithripala Sirisena. Then the matter initially ignored by the 10th Respondent was suddenly fixed for support on 02nd Jan 2015, just 6 days before the Presidential Election and that was during the Court Vacation. The Petitioner states that he had no doubt about motive of this sudden listing of the case except to confer a benefit or favour to the 12th Respondent who was facing a probable defeat, therefore apparently to grant the interim relief prayed for by the Petitioner to suspend the Presidential Election.

Writ Application withdrawn in the National Interest

31. The Petitioner states that in the meantime certain individuals including the Ravaya Editor Victor Ivan and Prof Rajiv Wijesinha, representing the main Opposition Candidate, Maithipala Sirisena, approached him, showing their concerns about the sudden reemergence of the case fixed for support just six days before the Presidential election, during the Court Vacation. Therefore, they requested the Petitioner to consider withdrawing the case as they were strongly of the view that the interim relief prayed for the suspension of the Presidential Election would be granted by the Court, effectively allowing the 12th Respondent to remain in office, completely jeopardizing the main

Opposition Candidate's election campaign. The Petitioner states that after objectively considering the said request he decided to withdraw the Writ Application on the day (02nd Jan 2015) it was fixed for support before the 10th Respondent.

32. The Petitioner states that he did not appear in Court on 02nd Jan 2015 and instead filed a Motion, setting out, *inter alia*, following reasons for the withdrawal of the Writ Application.

'Whereas since the filing of this Petition, I believe that the public opinion on the Extant President has been evidently eroded and in this background I contemplate that the Attorney General who performs his office under the Extant President would have been instructed to concede the Interim Relief prayed for in the Petition to suspend the holding of the Presidential Election scheduled for 08th Jan 2015 until the final determination of this Petition, effectively throwing a life-line to the Extant President to remain in Office for a considerable period, against the Will of the People that has been expressed by both in the electronic and print media since filling of this Petition'

'Whereas in this background I believe that the Petition filed in the national Interest could be defeated if preceded with it, I withdraw the Petition, with due respect to the Will of the people and their Sovereignty that would determine their choice through the exercise of their franchise at the forthcoming Presidential Election.'

*True copy of the said Motion filed in Court on 02nd Jan 2015 marked **P13** is attached hereto.*

33. The Petitioner states that on 02nd Jan 2015 the Writ Application was taken up for support before the 10th Respondent and the Justice A H M D Navaz, both appointed to the office by the 12th Respondent with no due process being followed. However, as there was a Motion filed in Court to withdraw the matter, the Court had no other option but to allow the withdrawal of the Writ Application effectively denying the 12th Respondent to amend his imprudent decision making of calling the Presidential Election almost two years before it was due and thereafter amend his fault to remain in office unhindered.

*A ruling made by the Court on 02nd Jan 2015 allowing withdrawal of the Petition marked **P14** is attached hereto.*

34. The Petitioner states that there was no way that the Petition duly acknowledged by the Registry go disappeared without the tacit approval of either the 8th Respondent and/or the 10th Respondent. The Petitioner states that it was patently clear that after having realized that the then Executive President was facing a potential defeat the matter was fixed for support on 02nd Jan 2015 during the Court Vacation, presumably to confer a favour to the

then President, the 12th Respondent to continue to occupy the office with the suspension of the election.

35. Therefore, the Petitioner states that the aforesaid actions by the 10th Respondent, initially to misplace the Petition and then to fix the matter for support, when the 12th Respondent was facing a formidable challenge, amounts to abuse of office to confer a benefit to the 12th Respondent and the said actions clearly violate the Section 70 of the Bribery Act, requiring the 1st Respondent to conduct a credible and independent inquiry into the alleged judicial corruption in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.

8th Respondent pleading for favours from the Prime Minister

36. The Petitioner states that after the defeat of President Rajapakse at the Presidential election 2015, the 8th Respondent had met the Prime Minister Ranil Wickramasinghe and the Justice Minister, Wijedasa Rajapakse at Prime Minister's official residence on 19th January 2015 and had offered the Prime Minister unlawful favours, including his willingness to give judgements and make judicial appointments favouring the new Government, pleading that he may be allowed to occupy the office of Chief Justice uninterrupted. When the Prime Minister rejected these offers, the 8th Respondent had offered to resign from the office of the Chief Justice for a favour, seeking a diplomatic posting in Switzerland instead. The Petitioner states that in a statement issued on 17th Jan 2015, the Bar Association expressed its serious concerns about this improper conduct of the 8th Respondent, which has caused a grave and continuing damage to the integrity of the justice system, resulting the total loss of confidence in the system by the people of Sri Lanka.

*A true copy of the official copy of the Hansard (page 251/252) dated 30th Jan 2015, which contained the Prime Minister's statement made in Parliament, concerning the inappropriate conduct of 8th Respondent marked **P15** and statement issued by the Bar Association dated 17th Jan 2015 marked **P16** are attached hereto.*

37. The Petitioner states that this disgraceful act committed by the 8th Respondent was an act of insult to the peoples' judicial power the Court exercised purely on trust causing the people losing their trust in the Justice System. And at the same time the 8th Respondent's unlawful pledge made to the Prime Minister seeking favours is tantamount to commission of a criminal offence of judicial corruption by the 8th Respondent, which clearly attracts the Section 70 of the Bribery Act, requiring the 1st Respondent to initiate a credible and

independent investigation into the said act in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.

Judicial corruption involving the 7th Respondent favouring the new Government

38. The Petitioner states that after the Presidential Election 2015, the 7th Respondent, who had been unlawfully expelled from office, was recalled and reinstated in office of the Chief Justice on 29th Jan 2015. However, apparently her recall was subject to clear orders from the Executive that the Chief Justice should step down from office within 24 hours. The Petitioner states that, in fact well before the 7th Respondent recalled and reinstated in the office on 21st Jan 2015 the Colombo Telegraph correctly reported that the 7th Respondent would be allowed to occupy the office only for 24 hours.

A true copy of the news item with the caption "CJ Shirani just only for one day" published in the 'Colombo Telegraph' on 21st Jan 2015 marked P17 is attached hereto

39. The Petitioner states that after the 7th Respondent's return to the office on 29th Jan 2015, she attended her ceremonial farewell and made an announcement, that she was retiring from Office [at the age of 57 years, 8 years prior to the retirement age] on her own volition. The Petitioner states that the said statement was purportedly made, compromising the integrity of the judiciary in fulfilment of her undertaking given to the Executive. The Petitioner states that this wrongful act was purportedly done under moral duress, for benefits and retirement perks offered by the Executive, enabling it to appoint a person of its choice to the office of the Chief Justice.
40. The Petitioner states that this gross betrayal of the judicial power of the people by the 7th Respondent for improper purposes amounts to compromising the integrity of the judiciary with the Executive for favours and also to a commission of an criminal offence of corruption that falls well within the definition of the Section 70 of Bribery Act, requiring the 1st Respondent to initiate a credible and independent inquiry into her conduct in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.

Judicial corruption involving the 6th Respondent to favour the Executive

41. The Petitioner states that after the constructive dismissal of the Chief Justice Dr Shirani Bandaranayake from office on 30th January 2015, the Executive President Maithripala Sirisena, on his own volition, appointed Justice K Sripavan (63), the 6th Respondent to the office of the Chief Justice.

Challenging of abuse of tax free permit system for unjust enrichment by Ministers

42. The Petitioner states further that, sometime thereafter, being a public interest litigation activist, the Petitioner filed a Petition (SC/Writ/02/2015) on 12th May 2015 in the Supreme Court against the Corruption Commission for its failure to conduct a credible investigation into a formal complaint made by the Petitioner on 11th Dec 2014 against the unlawful selling of the tax exemption permits issued to Parliamentarians and the Cabinet of Ministers, to import high valued vehicles defrauding the Government revenue, running into several billions rupees. These permits had been issued under Section 19A of the Customs Ordinance purely in the public interest, enabling the permit recipients use the vehicles imported under such permits to discharge their offices effectively for public good.
43. The Petitioner states that on 06th Aug 2015, when the aforesaid Writ application (SC/Writ/02/2015) was supported, the Supreme Court, in principle conceded that there was an abuse of tax-free permits, yet refused to use its judicial power by declaring that 'as the selling of permits had been permitted under the prevailing Government policy', despite the fact that the abuse of the tax-free permits by the Members of Parliament and Cabinet of Ministers for unjust enrichment was a punishable offence under Section 70 of the Bribery Act.
44. The Petitioner states that therefore, he filed a Revision Application before the Supreme Court on 10th of Aug 2015 together with a Written Submission justifying the application for revision, requesting the 6th Respondent, to exercise the Court's inherent power and jurisdiction to revise this *per incuriam* and flawed order. Yet, the 6th Respondent has been abusing the office of the Chief Justice by keeping the said revision application in the official chambers and disregarding the same since 2nd Sep 2015. The Petitioner states that this action by the 6th Respondent amounts to judicial corruption by abusing office for the purpose of condoning unlawful favours and/or benefits enjoyed by the Members of Parliament and the Cabinet of Ministers, which is an offence that falls within the provisions of Section 70 of the Bribery Act.

A true copy of the Application for Revision, the Motion and the Written Submission referred to above filed in Court on 10th Aug 2015 marked P18, P19 and P20 are attached hereto.

6th Respondent ignores the law to confer unlawful favour to Executive President

45. The Petitioner states that further to the public criticism from quarters against the appointment of rejected candidates at the Parliamentary Election 2015 to the Parliament

through the National List (disregarding the National Lists duly published in the Gazette by the political parties), he voluntarily undertook an investigation, to ascertain the credibility of the manner that had paved way for the introduction of the clause (permitting Party Secretaries to appoint rejected candidates as MPs through the National List) to the Article 99A of the Constitution in 1988 without a people's approval obtained at a Referendum. The Petitioner states that law (Article 83 of the Constitution) does not permit such a clause which directly interferes with the people's sovereign right of franchise protected by the entrenched provision of Article 3 without due process been adhered to as set out in Chapter 12 of the Constitution.

Abuse of power to enact 99A National List Clause by J R Jayewardene Government

46. The Petitioner states that during the process of the investigation, he was able to discover hard evidence of serious corruption at an unimaginable scale, involving all three organs of the then J R Jayewardene Government, permitting the said clause being unlawfully inserted to Article 99A of the Constitution. This has allowed the defeated candidates to be elected as MPs by the Party Secretaries through the National List. Yet, the investigation revealed that on 18th April 1988 the Supreme Court apparently under moral duress, had made a manifestly flawed determination that the said clause was not inconsistent with the people's immutable sovereign right to franchise guaranteed in the Article 3 of the Constitution.

47. The Petitioner states that the said detailed investigation further revealed that the said 14th Amendment Bill approved by the Parliamentary Select Committee (appointed for the purpose), **did contain no such clause** permitting the Party Secretaries to appoint rejected candidates through the National List, yet the said clause had been introduced to the Article 99A, contravening the governing rules as setout in the Parliamentary Standings Order (Standing Order 65) that permits amendments to the bills only under limited circumstances.

*A true copy of the 14th Amendment Bill as approved by the Parliamentary Select Committee marked **P21** and the Parliamentary Standing Order marked **P22** are attached hereto.*

Prime Minister R Premadasa denies presence of the impugned clause in the 14A Bill

48. The Petitioner states that the investigation also revealed that the said clause had been interpolated to the Article 99A of the 14th Amendment by the Executive President J R Jayawardene, a fact which was affirmed by the statement made by Prime Minister R Premadasa, who had introduced the Bill at the parliamentary debate held on the 14th Amendment on 04th May 1988. The relevant extracts of the statement of the Prime Minister are reproduced below.

"... Mr Speaker, what is this Fourteenth Amendment to the Constitution? I have to raise this question, because there was a discussion of a Fourteenth Amendment, which as I came to understand later, is different from the amendment to the constitution that I speak of, in this instance ..."

"... These 29 seats will be allocated the different parties contesting in election, in proportion to the votes received by each such party at National level. The names of party nominees are known beforehand. In fact their names are published in the Gazette immediately after the closing nominations. Therefore the voters are aware of the identity of the candidates of the different parties who are to be elected as National Members..."

*"... Let me make it very clear, that the 14th Amendment presented today, is the result of the decisions taken by the Select Committee on Franchise and Elections, which concluded its sittings on 29th February 1988. **It is based on the Report adopted by this Committee..** (the report referred to herein did contain no such clause permitting party secretaries to appoint defeated candidates as MPs through the national list ..."*

*A true copy of the relevant part of the Parliamentary proceedings dated 04th May 1988 marked **P23** is attached hereto.*

Executive President undermines the independence of the Judiciary in 1988

49. The Petitioner states that the evidence of judicial corruption involving the Supreme Court as found in the Special Determination Record (SC/SD/02/1988) are given below.

- a) President J R Jayewardene sends a 'typed written note' to the Chief Justice Parinda Rajasinghe, claiming to be the 14th Amendment to the Constitution (which was not

a bill published in the gazette as required by Article 78 and 82 of the Constitution) accompanied by a letter dated 08th April 1988, demeaning the office of the Chief Justice, addressing the office *'My dear Chief Justice'*

- b) The Chief Justice entertains the said typed written note despite President J R Jayewardene not adhering to the process specified in Chapter 12 of the Constitution.
- c) The Supreme Court holds a 'hearing' on 18th April 1988, to determine the consistency of the document referred to by the President J R Jayewardene with the Constitution, despite there was no such bill published in the Gazette to amend the Constitution thereby denying the citizens of their legitimate right to challenge it.
- d) A citizen, namely K Leelatunga, presents an affidavit (18-04-1988) at the hearing, requesting a copy of the note sent to Court by the President J R Jayewardene and the Court refuses to issue a copy, on the basis that citizens are not entitled to have access to it.
- e) The Court rules on the same day, that the clause permitting Party Secretaries to elect rejected candidates as MPs through the National List does not violate people's sovereign right of franchise, the entrenched Article 3 of the Constitution with no reasons whatsoever given for the said ruling.

A true copy of the letter sent to the Chief Justice by President J R Jayewardene dated 08th April 1988 marked P24, the type written note sent to the Chief Justice marked P25 and the affidavit furnished to Court by K Leelatunga Marked P26 are attached hereto.

50. The Petitioner that the process adopted by the Supreme Court in 1988 to approve the 14th Amendment clearly suggests that the Supreme Court's flawed determination had been made apparently under moral duress. The Petitioner states that the President J R Jayewardene's abuse of Judiciary in this manner has been well documented and revealed that in fact, the President Jayewardene had declared that he was seeking to teach the judges a lesson in order to make them more pliable to the wishes of the Executive.

A true copy of an extract obtained from the Report published by the International Commission of Justice on the attacks on Judiciary by President J R Jayawardene by Paul Sieghard marked P27 is attached hereto.

Supreme Court rules the content of the Determination Record confidential

51. The Petitioner states that then he filed a Motion requesting to obtain a certified copy of the Supreme Court Special Determination Record (SCSD/02/1988). The Court however refused the request with the following Order made by the Justice Eva Wanasundara.

"... Communication between the President and the Chief Justice and the Observations of the Court, which are communicated to the President and to the Speaker, need not be disclosed to Mr Kodituwakku. The request contained in the Motion is therefore refused ..."

52. Followed by this refusal the Petitioner states that he made a further request to the 6th Respondent, informing that the Judiciary is under duty to respect and uphold the people's judicial power and respect the people's right to have access to the said information, demonstrating the impartiality in the Administration of Justice and therefore to make available the certified copy of the Supreme Court's Special Determination Record (SC/SD/02/1988). The Petitioner states that further to the said request, the Court issued a certified copy of the said Special Determination Record, the issuance of which was originally refused by Justice Eva Wanasundara.

A true copy of the request made to the Chief Justice on 10th Sep 2015 marked P28 is attached hereto.

Violation of the Constitution by the 5-Judge Bench in 1988

53. The Petitioner states that the Supreme Court was well aware that in 1988 the five-judge Bench of the Supreme Court had breached the trust placed in it by the people to uphold the people's democratic rights enshrined in the Constitution. Apparently, this would have been the only reason for the refusal to release a copy of the determination record by Justice Eva Wanasundara, who did not want people to know the Judicial Corruption apparently under moral duress, that paved way for the insertion of the clause, permitting rejected candidates to the Parliament through the National List, to Article 99A of the Constitution unlawfully.

Petitioner invokes Writ Jurisdiction against National List appointments

54. The Petitioner states that after all the relevant evidence was compiled, appearing in person on **13th Oct 2015** he challenged the National List appointments made by the Party Secretaries in the Supreme Court by way of a Writ Application (SC/Writs/05/2015), invoking the jurisdiction of the Court in terms of Article **104H** of the Constitution. This provision of law **[104H (2)]** requires the Court to hear and finally dispose the application within a period of two months.

A true copy of the Petition SC/Writs/05/2015 dated 13th Oct 2015 marked P29 is attached hereto.

Petitioner requests for a Fuller Bench to overrule the flawed ruling of 5-Judge Bench

55. The Petitioner states that in a Motion filed in Court on 13th Oct 2015, he made an application to the 6th Respondent in terms of Article 132 (3) (iii) of the Constitution, requesting a Fuller Bench of the Supreme Court to hear the case. This request was made on the basis of the fraudulent manner in which the said 'flawed clause' has been inserted to the Article 99A of the Constitution with the tacit approval of the Bench of 5 Judges of Supreme Court obtained apparently under moral duress, denying the people of their sovereign right of franchise, which is a matter of paramount National importance.

A true copy of the Motion dated 13th Oct 2015 marked P30 is attached hereto.

6th Respondent rules that National List abuse is not a matter of National importance

56. The Petitioner states that on 24th Oct 2015 the 6th Respondent refused the application for a fuller Bench with the following Opinion made with no reasons given for the refusal.

"I am of the view that the matters involved in this case are not of general and public importance. Hence the request made in terms of Article 132 (3) (iii) of the Constitution is refused"

57. The Petitioner states that the said ruling is patently flawed, **as the matters involved in this case are all about the abuse of National List provision in the Supreme Law of the Land, the Constitution.** The Petitioner states that the Election Commissioner himself, the Election Observers, the concerned learned citizens and many more including many editorials published in the leading national newspapers and electronic media had critically expressed their shock and dismay over the abuse of the National List to appoint rejected

candidates through the National List provision. These include the disgust expressed by the Madulawe Sobitha Thero, the leading campaigner for Good Governance. Therefore the Petitioner objectively considered that the view expressed by the 6th Respondent is arbitrary, unfair and unreasonable and apparently expressed to confer a favour to the Executive President, thus directly violating the Constitution and Commonwealth Latimer House Principles referred to in the paragraph 8 above. Therefore the Petitioner states that the 6th Respondent's decision amounts to compromising of the independence and integrity of the Judiciary to the Executive.

58. The Petitioner states further that therefore the failure to uphold the rule of law betraying the people's judicial power in such an inappropriate manner is not expected from a person holding the office of the Chief Justice, who exercises the people's judicial power purely on trust, unless he is motivated by improper and irrelevant considerations of conferring a benefit or favour to the Executive President that clearly falls well within the definition of the Section 70 of Bribery Act, which requires the 1st Respondent to initiate an independent and credible inquiry in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.
59. The Petitioner states that in this background he was compelled to file a Motion on 26th Nov 2015 wherein it was stated that the 6th Respondent is biased towards the Executive, despite volume of credible evidence produced in the case that the impugned 'flawed clause' referred to above (the focal point in the matter) has been fraudulently inserted to the Article 99A of the Constitution by the then Executive President J R Jayewardene in 1988, by circumventing the procedure established by law and hence *ab initio void*. And therefore requesting the 6th Respondent to review the impugned opinion expressed by him and the case be fixed for support before the Fuller Bench of the Supreme Court sans the Chief Justice **K Sripavan**, Justice **Eva Wanasundara** (who had clearly shown bias towards the Executive as shown in paragraphs 34-36 above) and Justice **Sarath De Arbreu** presently indicted in the High Court of Colombo.

A true copy of the Motion dated 26th Nov 2015 and annexures filed in Court marked P31 is attached hereto

60. The Petitioner states that as he has refused to compromise his integrity and committed to discharge his duty as a citizen conscientiously, as required by the Constitution [(Article 28(c))] and also refused to condone corruption in the Judiciary he has drawn the displeasure of the 6th Respondent.

Petitioner accused for 'Obstruction of Justice' for requesting a Fuller Bench sans 6th Respondent

61. The Petitioner states that further to filing of the Motion dated 26th Nov 2015 requesting a fuller bench sans the 6th Respondent (who had already ruled that the 'National List abuse is not a matter of National Importance) the matter was mentioned in Court on 08th Dec 2015. The 6th Respondent then accused the Petitioner for '**obstruction of justice**' and called the Respondents to make their submissions on the content of the Motion dated 26th Nov 2015. The Petitioner states that without the matter being heard within the stipulated period of 2 months as specified by the Constitution, and drawing the case to a different direction amount to an act of denial of justice and act of intimidation and denial of Petitioner's right to perform his professional duty without intimidation, hindrance, harassment or improper interference' as specified in **Article 16** on the United Nations Basic Principles on the Role of Lawyers adopted in Sep 1990.

A true copy of the journal entry dated 08th Dec 2015 made by the 6th Respondent marked P32 and the Principles on Role of Lawyers adopted by the United Nations in September 1990 marked P33 are attached hereto.

UN Principles on Role of Lawyers ensures right to practice without professional restrictions

62. The Petitioner states that the **Article 23** of the United Nations Basic Principles on the Role of Lawyers further stipulates that *lawyers, like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.*

Latimer House principles permit legitimate criticism of the Judiciary

63. The Petitioner states further that the alleged accusations made against him by the 6th Respondent also violates the Commonwealth Latimer House Principles, (refer to in paragraph 8 above), which requires the Court shall not use Criminal Law and contempt proceedings to restrict legitimate criticism of the performance of judicial functions.

64. The Petitioner states further that the failure of the Judiciary to observe the people's Judicial Power as required by law has contributed to tarnish the image of the Sri Lanka's Judiciary in the eyes of the international Community, compelling the Government of Sri Lanka to concede at the United Nations Human Rights Council that the people of Sri Lanka have no trust and confidence in its justice system and to cosponsor a Resolution (A/HRC/RES/30/1) on 01st Oct 2015, to set up a judicial mechanism with international dimension to try serious crimes committed against the humanity.

A true copy of the Resolution (A/HRC/RES/30/1) adopted by the United Nations Human Rights Council with full agreement of the Government of Sri Lanka on 01st Oct 2015 marked P34 is attached hereto.

65. The Petitioner states further the Bar Association of Sri Lanka in a press statement issued on 28th Nov 2015 too has affirmed that the existing judicial system in this country has not met the confidence of the people and that it is an undeniable fact that over a period of time the independence and credibility of many of these institutions have suffered, resulting in an erosion of the confidence in the system as a whole.

A true copy of the Press statement dated 28th Nov 2015 issued by the President of the Bar Association referred above marked P2 is attached hereto.

66. Therefore, the Petitioner states that conduct of the 6th Respondent referred to above condoning corruption in the Executive amounts to commission of an act of judicial corruption that falls well within the definition of the Section 70 of Bribery Act that requires the 2nd Respondent to inquire into in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.

Petitioner persecuted for exposing Judicial Corruption of 10th Respondent

67. The Petitioner states that since he had averted the 10th Respondent from conferring a benefit to the 12th Respondent (with a suspension of the Presidential Election) morefully described in the paragraph 26 above, under the subheading '**The Petitioner challenging the nomination of the 12th Respondent for a 3rd Term**', the 10th Respondent since then is ill disposed towards the Petitioner and is abusing the office of the President of the Court of Appeal to persecute the Petitioner who practices law in the Court of Appeal. The Petitioner states that by his letter dated 25th May 2015 supported by an affidavit dated 25th May 2015 he has already informed the 6th Respondent about this unacceptable state of affairs at the Court of Appeal.

*True copies of the letter dated 25th May 2015 addressed to the 6th Respondent marked **P35** Affidavit dated 25th May 2015 marked **P36** are attached hereto.*

68. The Petitioner states in this background he was compelled to request the 10th Respondent to refer all the cases represented by the Petitioner in the Court of Appeal, to a different Bench in which the 10th Respondent was not a member. One such case was the Writ Application (CA/Writs/65/2015) filed against the Corruption Commission for its failure to commence a credible and independent inquiry against the 8th Respondent for abusing office of Attorney General and thereby causing a colossal loss of 619 million rupees revenue to the Customs Department. In the said case the Petitioner had challenged the integrity and misconduct of the 8th Respondent who had apparently abused the office to commit a serious offensive act with the aiding and abetting of the 11th Respondent by withdrawing case (SC/Spl/LA/100/2009) filed in the Supreme Court for the Director General of Customs (DGC).
69. The Petitioner states that before this matter was fixed for support on 30th Aug 2010 the DGC had given very clear instructions to the 8th Respondent by a letter dated 03rd Aug 2010, expressing her views against the withdrawal of the said case (SC/Spl/LA/100/2009) considering the colossal loss of revenue incurred by the Customs. However on 30th Aug 2010, the 11th Respondent appearing in Court for the 8th Respondent deliberately acted against the written instructions of the Director General of Customs (DGC) and withdrew the case. And after withdrawing the case, the 11th Respondent had completely deceived the DGC with a letter hand delivered, giving an impression that the matter was withdrawn with the prior consent of the DGC, which however was received at the DGC's office only on 01st Sep 2010.

*True copies of the DGC's Written Instructions given to the 8th Respondent dated 03rd Aug 2010 against the withdrawal of the case SC/Spl/LA/100/2009 marked **P37**, the DGC's written submission sent to the Attorney General about the abuse of office by the 8th Respondent against the written instructions given by the DGC Marked **P38**, Order made by the Supreme Court on 30th Aug 2010 marked **P39** and the letter created by the 11th Respondent addressed to the DGC which was hand delivered to the DGC on 01st Sep 2010 marked **P40** are attached hereto.*

70. The Petitioner states that when he made an application to the 10th Respondent to refer the matter (CA/Writs/65/2015) by way of a Motion filed in Court to another Bench for support, the 10th Respondent initially refused but finally allowed the application and referred the matter to a different Bench.

A true copy of the Motion dated 09th Feb 2015 filed in the Court of Appeal seeking the appointment of a different bench to support the case (CA/Writ/65/2015) marked P41 is attached hereto.

71. The Petitioner states that when the Petitioner made a similar application to the 10th Respondent on 21st May 2015 for another case (CA/Writ/83/2014), the 10th Respondent alleged that the request made by the Petitioner was unlawful and refused to make any Order on the application made by the Petitioner and the Petitioner states that since then the case record has not been returned to the Registry.

72. The Petitioner states that, the 10th Respondent's action amounts to abuse of office to persecute the Petitioner, which was not a judicial act at all. And therefore he challenged the 10th Respondents unlawful action before the Supreme Court by way of a Fundamental Rights Petition (SC/FR/319/2015) on 03rd Aug 2015.

A true copy of the Petition SC/FR/319/2015 filed in Court on 03rd Aug 2015 marked P42 is attached hereto.

73. The Petitioner states that on 15th February 2016 when the matter was taken up for support in the Supreme Court, a preliminary objection was raised by the 11th Respondent that the action of the 10th Respondent was a 'judicial act', which cannot be challenged by way of a fundamental right violation application that only permits challenging of administrative or executive acts. The Petitioner states that the 6th Respondent accepted the preliminary objections raised by the 11th Respondent [keeping of the case record (CA/Writ/83/2014) in the 10th Respondent's custody since 21st May 2015 denying the Petitioner to support the matter] as a Judicial Act performed by the 10th Respondent and ruled that the said act not amounting to Administrative or Executive act. Further the 6th Respondent ordered the Petitioner to pay cost of Rs 50,000.00 to the Attorney General. The Petitioner states that the said Order given by the 6th Respondent amounts to clear abuse of the judicial power for improper purposes to persecute the Petitioner for exposing judicial corruption in the Superior Court System.

74. The Petitioner states further that since the making of the said flawed Order, he has filed two Motions at the Court of Appeal Registry (24th Feb 2016 and on 15th March 2016), requesting the 10th Respondent to return the Case Record (CA/83/2014) to the Registry of the Court of Appeal, enabling the Petitioner to make an appropriate application to proceed with the matter through a different counsel. Yet, the 10th Respondent has been deliberately abusing his office to persecute the Petitioner for not compromising his integrity to tolerate Judicial Corruption in the Superior Court System.

True copy of the Motion filed at the Registry of the Court of Appeal dated 24th Feb 2016 and 15th March 2016 requesting the 10th Respondent to return of the case record to the Registry marked P43 & P44 are attached hereto.

75. The Petitioner states that after the refusal the 6th Respondent to grant leave to proceed to his Fundamental Rights Application (SC/FR/319/2015), the Petitioner challenged the 6th Respondent's impugned Order, which was obviously *per incuriam*, as it has been based on irrelevant considerations and not on the relevant facts set out in the Petitioner's fundamental rights application and submissions made to the Court. The Petitioner states that the said rights application has challenged the abuse of office for improper purposes by the 10th Respondent that did in no way fall within the purview of a judicial act.

True copy of the said Revision Application made to the 6th Respondent on 23rd Feb 2016 marked P45 is attached hereto.

76. The Petitioner states that however, the 6th Respondent deliberately refuses to make any order on the said Revision Application and instead keeps the Revision Application in his Official Chamber, preventing the Petitioner from pursuing the said Revision Application, presumably to stop Petitioner's practice in the Superior Court System and to persecute the Petitioner for not tolerating Judicial Corruption.

Abuse of Judicial Office by the Respondents falls within the Offence of Corruption

77. The Petitioner states that the material facts contained herein concerning the conduct of the incumbent Chief Justice, the 6th Respondent and other Respondents referred to herein, establish a *prima facie* case of judicial corruption, emanating from the abuse of judicial office for improper purposes to favour themselves and/or the Executive, which falls within the offence of corruption as defined in the Section 70 of the Bribery Act, requiring the Commission to initiate a credible and independent investigation into this complaint in terms of Section 4 of the Act No 19 of 1994.
78. The Petitioner states that under Section 4 of the Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994, whenever a plausible complaint is made disclosing the commission of any offence under the Bribery Act or the Declaration of Assets and Liabilities Law, No. 1 of 1975, the Commission is under duty and required to inquire into any such complaint under Section 3 of the Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994 and to conduct a proper investigation and direct 'institution of proceedings in the appropriate Court of Law'.

Judicial Corruption ignored by the Corruption Commission

79. The Petitioner states that therefore, purely in the public interest, he made a formal but plausible complaint by way of an Affidavit to the 2nd Respondent to Investigate allegations of Bribery or Corruption on 15th Feb 2016, setting out the Judicial Corruption involving the 6th 10th Respondents, urging the Commission to initiate independent and credible investigation into the complaint made as required by law as the offence reported fell well within the ambit of the Section 70 of the Bribery Act. The Petitioner states that however the 1 to 5th Respondents have failed to initiate any action whatsoever against the 6th to 10th Respondents and not even a acknowledgment notice was sent on the Complaint duly served on the 2st Respondent.

*True copy of said affidavit tendered to the 2nd Respondent on 15th Feb 2016 marked **P46** and the covering letter accompanied the said complaint marked **P47** are attached hereto*

80. Therefore, the Petitioner states that the failure on the part of the 1st to 5th Respondents to act as required by law, amounts to violation of the trust and confidence placed in the Commission by the people of Sri Lanka, whose Executive power is being exercised by them. The Petitioner therefore states that the failure on the part of the Commission and or the Members of the Commission 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 people of Sri Lanka whose executive power is being abused by the 1st to 5th Respondents
- b) it offends the trust and confidence placed in them by the people of Sri Lanka
- c) the said inaction has been apparently influenced by irrelevant considerations

81. The 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.

82. The Affidavit by the Petitioner is appended hereto in support of the averments contained herein.

83. The Petitioner states that he has not invoked the Jurisdiction of the Supreme Court previously in respect of the matter pleaded herein concerning Judicial Corruption and pleads that documents **P1** to **P47** be deemed to be part and parcel hereof.

WHEREFORE, the Petitioner prays that the Supreme Court would;

- a) issue **Notice** on the Respondents;
- b) issue a Writ in the nature of a Writ of **Mandamus** compelling the 1st Respondent Commission and/or members of the Commission (2nd, 3rd and 4th Respondents) to direct the 5th Respondent to initiate a credible and independent investigation/inquiry into the plausible complaint made by the Petitioner, on the Judicial Corruption alleged to have been committed by the 6th to 10th Respondents, as expeditiously as possible
- c) grant cost and
- d) grant such other and further relief and/or declaration as to Your Lordships' Court shall seem fit and meet

N. Kodituwakku


.....
Attorney-at-Law & Commissioner for Oaths
99, Subadrarama Rd, Nugegoda.

Nagananda Kodituwakku

The Public Interest Litigation Activist and the Petitioner in person