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

In the matter of an application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Nagananda Kodituwakku,
General Secretary,
Vinivida Foundation,
99, Subadrarama Road, Nugegoda.

PETITIONER

C.A. Case No. WRT/0609/21

Vs.

1. D.M.S. Dissanayake,
Former Chairman,
Consumer Affairs Authority (CAA),
1st Floor, CWE Secretariat,
27, Vauxhall Street,
Colombo 02.

1A. Shantha Niriella,
Former Chairman,
Consumer Affairs Authority (CAA),
1st Floor, CWE Secretariat,
27, Vauxhall Street,
Colombo 02.

1B. Hemantha Samarakoon,
The Chairman,
Consumer Affairs Authority (CAA),
1st Floor, CWE Secretariat,
27, Vauxhall Street,
Colombo 02.

2. Mrs. Siddika Senarathna,
The Director General,
Sri Lanka Standards Institute,
17, Victoria Place,
Colombo 08.

3. Thushan Gunawardena,
The Former Executive Director of Consumer Affairs Authority (CAA),
154/8, Purwarama Road,
Colombo 05.

4. Laugfs Holdings Ltd,
101, Maya Avenue,
Colombo 06.

4A. Laugfs Gas Lanka Ltd,
101, Maya Avenue,
Colombo 06.

5. Litro Gas Lanka Ltd,
267, Union Place,
Colombo 02.

6. Bandula Gunawardena,
Minister of Trade,

492, De Mel Mawatha,
Colombo 05.

6A. Nalin Fernando,
Minister of Trade,
492, De Mel Mawatha,
Colombo 05.

6B. Wasantha Samarasinghe,
Minister of Trade, Commerce, Food Security
and Cooperative Development,
No. 492, L.H.P. Building, R.A. De Mel Mw.,
Colombo 03.

7. Lasantha Alagiyawanna,
Former State Minister of Consumer Protection,
Ministry of Consumer Protection,
27, Vauxhall Street,
Colombo 02.

8. P. P. D. S. Muthukumarana,
Former Government's Chief Valuer,
Valuation House,
748, Maradana Road,
Colombo 10.

8A. A. S. W. K. Nanayakkara,
The Government's Chief Valuer,
Valuation House,
748, Maradana Road,
Colombo 10.

9. C.D. Wickramarathna,

Former Inspector General of Police,
Police Head Quarters,
Colombo 01.

9A. T.M.W. Deshabandu Tennakoon,
Inspector General of Police,
Police Head Quarters,
Colombo 01.

9B. Priyantha Weerasooriya,
The Acting Inspector General of Police,
Police Head Quarters,
Colombo 01.

10. Attorney General,
Attorney General's Department,
No. 159, Sanchi Arachchi Waththa,
Colombo 12.

RESPONDENTS

BEFORE : K. M. G. H. KULATUNGA, J

COUNSEL : Dharshana Weraduwage with Dhanushi Kalupahana for the Petitioner.
Manohara Jayasinghe, DSG for the State.
Suren De Silva with Jehan Samarasinghe instructed by D. L. & F. De Saram for the 4A Respondent.
Ruwantha Cooray with Rodney Vaz instructed by Dhammika Jiminige for the 5th Respondent.

ARGUED ON : 22. 05. 2025

DECIDED ON : 12. 06. 2025

ORDER

K. M. G. H. KULATUNGA, J

1. This application of which the Petitioner is Mr. Nagananda Kodituwakku, General Secretary, Vinivida Foundation, is one in the nature of public interest litigation. When this matter was taken up for argument, Mr. Suren de Silva for the 4th respondent, raised a preliminary objection on the maintainability of the application as it is presently constituted. The sum total of his objection is that Mr. Nagananda Kodituwakku was issued with a Rule and was disenrolled by the Supreme Court in **SC/Rule/03/2017** decided on 29th of February, 2024. Whilst removing Mr. Nagananda Kodituwakku from the office of Attorney-at-Law, their Lordships also imposed a further sanction restraining Mr. Kodituwakku from filing public interest litigation in his personal capacity as such conduct would nullify the decision to remove and disenroll Mr. Kodituwakku from the office of an Attorney-at-Law. The main thrust of Mr. Suren de Silva's objection is that permitting the petitioner Mr. Nagananda Kodituwakku to continue with this application in the present form would, in effect, nullify the said Rule and the limitation imposed by the Supreme Court. In support he relied on the order made on a similar objection in the **CA/WRT/315/2018**, CAM 14.02.2025.

2. The Counsel for the 5th respondent, Mr. Ruwantha Cooray, as well as the Counsel for the 10th respondent, Deputy Solicitor General Mr. Manohara Jayasinghe, associated themselves with the said objection, and both were heard. The learned DSG Mr. Jayasinghe's submission was that no gas cylinder had exploded in Mr. Kodituwakku's house, as such, this is in effect a public interest litigation. The Supreme Court by making the consequential order in **SC/Rule/03/2017** has expressly restrained Mr. Kodituwakku from filing public interest litigation which also would entail

the continuation with existing applications as well. He pointed out that, in determining a similar objection in **CA/WRT/315/2018**, the Court of Appeal had been mindful of this aspect and found that this objection should not be considered solely on the technicalities relating to the date of filing the applications as claimed by the petitioner. Therefore, the Court of Appeal in the said application has clearly been of the view that the limitation imposed by the Supreme Court would apply to pending matters as well.

3. The learned Counsel for the petitioner in responding to this preliminary objection argued that the facts of **CA/WRT/315/2018** is different and is distinguishable from the facts of this application. Secondly, he submitted that the said decision is *per incuriam* and has no application to the present matter. In elaborating further, it was submitted that the petitioner in this application is not Mr. Nagananda Kodituwakku in his personal capacity but is named *qua* General Secretary of the Vinivida Foundation. Therefore, he argued that it was different and is distinguishable from **CA/WRT/315/2018** in which the petitioner was Mr. Nagananda Kodituwakku in his capacity as an Attorney-at-Law. In support of this argument, attention was drawn to paragraph 1 of the petition, which reads as follows:

> *"The Petitioner is a public interest litigation activist, Attorney-at-Law and also a Solicitor (England and Wales) and the General Secretary of Sri Lanka Vinivida Foundation, a political entity, established with the main objective of restoring the rule of law in the Republic of Sri Lanka. The Petitioner presents this matter before Your Lordship's Court in the exercise of his fundamental duty as a concerned citizen to uphold and defend the Constitution and the law, which includes the duties to further National and Public interests, combat misuse of public office on trust and to respect the rights and freedoms of others [Article 28]."*

4. Based on this, it was submitted that the petitioner is not Mr. Kodituwakku in his personal capacity, but the General Secretary of the Vinivida Foundation. The Counsel for the petitioner Mr. Dharshana Weraduwage argued that as this *litis* was instituted well before the determination in **SC/Rule/03/2017**, the rights of the parties should be determined as at the commencement of the action. In support of this argument, he relied and cited the following dicta of Justice Samayawardhena in the case of **Captain M. B. A Dissanayake vs. General Jagath Jayasuriya and Others** (SC/Appeal/15/2021, decided on 05.09.2023), where it was held "*…it is well settled law that rights of the parties shall be determined at the time of the institution of action."* Based on this principle, it was argued that since the institution of this application has preceded the Rule, the application should be proceeded with and determined, notwithstanding the said Rule.

Consideration of the Submissions.

5. The starting point of this preliminary objection, and the core issue is the maintainability of this application by Mr. Nagananda Kodituwakku. Is the petitioner Mr. Nagananda Kotuwakku, and if so, is Mr. Nagananda Kodituwakku prevented from continuing with this public interest litigation, filing of which preceded the finding in **SC/Rule/03/2017**, which was pronounced on 29th of February, 2024. According to the petition, the petitioner is Mr. Nagananda Kodituwakku. However, the petitioner is described as being the General Secretary of Vinivida Foundation. Paragraph 1 of the petition, narrating the status and the standing of the petitioner, provides that the petitioner Mr. Nagananda Kodituwakku being a person with several attributes: namely, a public interest litigation activist, Attorney-at-Law, a Solicitor, and the General Secretary of Sri Lanka Vinivida Foundation. The said Foundation is also further described as a 'political entity' established with certain objectives

described therein. There is no narration or averment as to the legal capacity or the incorporated status of the said Foundation. Therefore, the petitioner in this application is the natural person, Mr. Nagananda Kodituwakku. The reference to being the General Secretary of Vinivida Foundation is nothing more than a further description of the said natural person. Accordingly, I find that the petitioner in the present application is Mr. Nagananda Kodituwakku, and no other.

6. That being so, the limitation imposed by the Supreme Court in **SC/Rule/03/2017** requires to be now considered. The Supreme Court in issuing the Rule, ordered as follows:

> *"Taking into consideration that this is the second instance that the respondent was found guilty of professional misconduct, and the nature of the grave misconduct of the respondent referred to in the Rule, the aforementioned Rule is affirmed. We hold that the respondent is guilty of malpractice. Hence the respondent is removed from the office of Attorney-at-Law. Further, the respondent is restrained from filing public interest litigation in his personal capacity as such conduct would nullify the said decision to remove the respondent from the office of Attorney-at-Law."*

The Supreme Court has thus restrained and imposed a limitation against the petitioner filing public interest litigation in his personal capacity. The petition in its present form, is certainly an instance where Mr. Nagananda Kodituwakku has filed this application in his personal capacity.

7. This would lead to the next issue of the applicability of this restriction to pending matters. The learned Counsel for the petitioner argued that the rights of the parties ought to be determined as they were at the time of instituting the proceedings. In support of this contention, the petitioner relies on the decision in **SC/Appeal/15/2021**, decided on 05.09.2023. In

those lines, the argument extended is that the Supreme Court determination in the ruled matter would apply prospectively. He also relied on the particular wording of the said restriction to buttress his argument that the limitation is prospective and not retrospective. No doubt, the use of the words '*restrained from filing'* would appear to be prospective in form. However, one should read the entirety of the limitation, to comprehend the effect and import and the actual object of the limitation imposed on the petitioner Mr. Nagananda Kodituwakku. Their Lordships of the Supreme Court had been of the firm view that if Mr. Kodituwakku is not restrained from engaging in litigation in the form of public interest in his personal capacity it would nullify the decision of disenrollment. This simply and just means that the petitioner engaging in the prosecution of public interest litigation, be it a matter pending or otherwise, by itself will nullify the object and purpose of removing him from the office of an Attorney-at-Law. In this context, the said limitation should necessarily apply to future as well as pending *litis* of this nature.

8. It is in this context that Justice Ganepola in **CA/WRT/315/2018**, held that,

> *"This matter should not be evaluated solely on the technicalities related to the filing dates of the applications as claimed by the petitioner. Instead, it has to be taken into account the intentions of the Supreme Court as well."*

From the above exposition, it is abundantly clear that the intention of the Supreme Court was to restrain Mr. Nagananda Kodituwakku from engaging in public interest litigation even in his personal capacity. Justice Ganepola held further that,

> *"Any contrary decision permitting the petitioner to support or continue with any existing public interest litigation filed by the petitioner in his personal capacity would nullify the determination of the Supreme*

Court. Therefore, this Court is compelled to act in deference with the decision of bad, dishonourable and unworthy conduct of the petitioner which the Supreme Court has sought to forbid."

This clearly puts it beyond doubt that in the said decision Their Lordships have applied the limitation even to pending matters as well.

9. The argument of the learned Counsel for the petitioner is that Mr. Kodituwakku has filed this application in the capacity of the General Secretary of an organization, and would not come within the limitation imposed by the Supreme Court. I am unable to accept or accede to this contention. If Mr. Kodituwakku is permitted to come forward and so institute action and pursue with public interest litigation, as an officeholder in whatever form, it would defeat and nullify the very object and purpose of the Rule issued and the limitation imposed by the Supreme Court. Therefore, I am of the considered view that the effect and import of the said limitation is that Mr. Nagananda Kodituwakku is not permitted or entitled to engage in any form of public interest litigation, either directly or indirectly, be it a new or a pending matter.

10. Relying on the case of **Captain M. B. A Dissanayake vs. General Jagath Jayasuriya and Others** (supra), the petitioner argued that this matter cannot be determined based on the said objection as the rights of the parties should be determined as at the time of institution of the action. The objection in the present application is the petitioner's lack of standing (*locus*) to have and maintain this application in its present form. It is not an issue of determining the substantive rights of the petitioner. This arises out of a Rule and the limitation imposed which is in the nature of a disciplinary proceeding, determining the right to function as an Attorney-at-Law. With a rule being issued and such Attorney-at-Law being struck off the roll, his legal capacity to function as an Attorney-at-Law ceases with

immediate effect. Such person cannot, from there onwards, continue to function as an Attorney-at-Law even in pending matters. Correspondingly, a further limitation has been placed preventing Mr. Kodituwakku from instituting and engaging in any form of public interest litigation, even in his personal capacity. This is a prohibition against Mr. Kodituwakku from acting in any capacity and instituting which will include continuing with litigation of that nature; the present issue is not a question of determining the substantive rights as agitated in such litigation but a simple question of the effect and import of a subsequent incapacity and prohibition imposed. Therefore, the principle as determined by Justice Samayawardhena in **Captain M. B. A Dissanayake vs. General Jagath Jayasuriya and Others** (supra) has no application. It is not a question of *litis contestatio* being reached, but one of *locus*, and the effect of the specific prohibition. This argument of the petitioner is therefore misconceived.

11. In light of the aforesaid, I am inclined to uphold the preliminary objection. However, I am mindful that this application had been made in the public interest, in respect of an issue arising out of the propensity of gas cylinders to explode, which, at that point of time, was certainly an issue of great public interest. However, on the perusal of the record, it is evident that due to the intervention of this Court, various measures and steps have been taken to rectify and remedy the consequences arising out of such explosion of gas cylinders and certain preventative and corrective action had been taken. Accordingly, certain relief as sought appear to have already been satisfied. The computation of loss and damages resulted is a matter that may be considered by the relevant civil forum, if and when persons suffering such damages pursue action.

12. Coming back to the legal effect and import of the objection, the said limitation does affect the legal capacity and standing of Mr. Kodituwakku to have and maintain this application in the present form. Accordingly, I

am of the view that this petitioner cannot have and maintain this application in its present form. As such, I am left with no option but to uphold the preliminary objection.

13. The preliminary objection is thus upheld and this application is proforma dismissed. However, I make no order as to costs.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL