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

*In the matter of an application under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka*

**CA Writ Application No. 550-2025**

**DR. HETTI ARACHCHIGE PRIYANKARA PUJITH JAYAWARDANA,**
No.93/40, Elvitigala Road,
Colombo 08.

**PETITIONER**

-Vs-

1. **SRI LANKA MEDICAL COUNCIL**

2. **PROF. VAJIRA H. W. DISSANAYAKE**
   The President,
   Sri Lanka Medical Council.

3. **PROF. RANIL FERNANDO**

4. **PROF. JANAKA DE SILVA**

5. **DR S. SHANMUGANTHAN**

6. **DR. DUMINDA SAMARASINGHE**

7. **DR. THENUWAN WICKRAMASINGHE**

8. **DR. H.D.B. HERATH**
   The Register,

Sri Lanka medical Council,
All of
31, Norris Canal Road, Colombo 10.

**RESPONDENTS**

| | | |
|---|---|---|
| Before | : | **Hon. M.T. Mohammed Laffar, J.(Act.P/CA)** |
| | : | **Hon. K. Priyantha Fernando, J.(CA)** |
| Counsel | : | Ali Sabry , PC with Ruwantha Cooray, Namiq Nafath and Akila Aluthwatte instructed by Sanath Wijewardane For the Petitioner. |
| | | Nayomi Kahawita, SSC for the Respondents. |
| Supported on | : | 04.06.2025 |
| Decided on | : | 16.06.2025 |

**K. Priyantha Fernando, J.(CA)**

The main relief sought by the Petitioner is to issue a Writ of Certiorari to quash the Report dated 26.09.2024 (P7A) of the 3rd to 7th Respondents.

He has further sought following five interim Orders until final determination of this application:

1. Staying the Report P7A 3rd – 7th Respondents (constituting the Preliminary Proceedings Committee) until hearing and final determination of this application.
2. Staying the operation of the 'charge sheet' disclosed in the 'Notice of Inquiry' P8A and taking any step in pursuance of the charge sheet until final determination.
3. Staying the decision of the members of the Professional Conduct Committee (including the 2nd Respondent) to hold an inquiry into the matters alleged in the Report P7A.
4. Calling for the totality of the record maintained by the 1st Respondent in respect of the inquiry bearing Reference No. PPC 524/PCC 6.
5. Calling for the determination of the members of the Professional Conduct Committee made in terms of Rule 12(1) of the Medical Disciplinary (Procedure) Regulations 1990.

FACTUAL MATRIX:

The ill-fated sequence of events described in the Petition commenced upon the death of a patient on 2nd June 2023. On 30th May 2023, the patient suffering with multiple comorbidities including diabetes, hypertension, chronic hyponatremia, etc. was admitted under the Petitioner's name to Kings Hospital, Colombo. In his capacity as a Visiting Consultant Physician, the patient recovered to a state where in the Petitioner's considered view he was medically fit to be discharged on 3rd June 2023, subject to the concurrence of another Consultant Physician and running of certain tests. Patient was treated for low sodium level and other metabolic conditions and was seen by 7 other Consultants.

On 2nd June, when the Petitioner was at home, the doctor in charge of the ward has informed the Petitioner by telephone that the patient's haematoma on the right side of the chest, caused by a fall at home had increased and his C reactive

protein level (CRP) has significantly increased indicating infection, which was a new development.

Petitioner in his considered opinion, has informed the doctor-in-charge of the ward to administer Augmentin intravenously to treat the infection and gave instructions to rectify other problems. Having examined the patient physically later that morning, assuming Augmentin had been administered, and seeing that he was fit to be discharged the next day, the Petitioner has left the hospital to attend a wedding ceremony. Whilst he was at the wedding ceremony, he has been informed by a telephone call from a male nurse at the ward that the patient had developed an anaphylactic reaction supposedly to the Augmentin since the patient had been allergic to Augmentin. Around that time, the Petitioner had been informed by the resuscitation team that the patient had tragically passed away.

The deceased's wife has complained against the Petitioner and the doctor-in-charge of the ward to the Sri Lanka Medical Council (SLMC) alleging medical negligence.

The complaint has been referred to the Preliminary Proceedings Committee (PPC) constituting the 3rd to 7th Respondents. The Petitioner has been summoned before the PPC and complied by giving a statement.

The PPC concluded its inquiry by making the following finding,

"*Conclusion: After examining oral and documentary evidence presented before the PPC, we find that a prima facie case has been made out against Dr. Priyankara Jayawardena and Dr. F. Shazna Nawaz (the defendants) in respect of medical negligence associated with medical treatment.*

*Remarks:*

1. *Before parting with this decision, it is relevant at this stage to mention that we did not place any reliance on the version of Dr. (Ms.) Nawaz-that her signature was forged on the drug chart by the nurse, because the evidence*

*of Dr. (Ms) Nawaz cannot be accepted by the test of prudence and the facts and circumstances of this case created a serious doubt about her truthfulness and creditworthiness. Moreover, she never complained of any forgery to law enforcement officers and therefore the probability factor does render her evidence unworthy of credence.*

2. *During the period in question, we find that the hospital also has not followed the expected standard of care required to prevent such incidents occurring*".

(vide page 53 of the Report of the PPC)

Premised on the report P7A, the Petitioner has been served with a notice of inquiry P8A to appear before the Professional Conduct Committee (PCC) on 26th April 2025.

The learned President's Counsel for the Petitioner relied on the 'no evidence rule' which is, if proved a valid ground for the judicial review.

POSITION OF THE PETITIONER:

The Petitioners position is that there was no reason for him to suspect the patient had any allergy to Augmentin nor was it brought to his attention at the time doctor-in-charge of the ward telephoned him to inform about increased haematoma.

He categorically states that he did not 'prescribe' Augmentin nor was he the 'Prescriber,' **within the meaning of the guidelines of the Sri Lanka Medical Council**.

He states that, it is an undisputed fact that the said condition could be arrested through administering 'Augmentin' which is the most appropriate antibiotic to treat infected haematoma, an inexpensive, commonly used antibiotic.

After the Petitioner wrote to the SLMC requesting a copy of the report dated 18.12.2024 (P8), in response to the same, the SLMC by letter dated 12.03.2025 has communicated a true copy of it.

It was Petitioner's Contention that P8 represents a self-contradictory, pre-determined or biased witch-hunt against the Petitioner engineered to pin the overall liability on him.

He contends that PPC failed to make into account the most vital consideration, that SLMC's own published Guidelines titled, 'Guidelines on Ethical Conduct for Medical and Dental Practitioners Registered with the Sri Lanka Medical Council' (P9) which stipulates, "*legal responsibility for prescribing lies with the medical practitioners who signs the prescription*".

He states that the PPC has paid no heed to its own published guidelines by which the SLMC imposes legal responsibility on the prescribing doctor, who in this case, is not the Petitioner. Report has been complied in disregard of the said guidelines P9 and per se renders the report P7 of PPC erroneous and without merit.

He further states that impugned findings by PPC had failed to consider the instructions issued marked P10 by the SLMC to medical practitioners on serious medical misconduct, especially regarding delegating professional duties to colleagues.

Attention of this Court was drawn to P10 which deals with delegation of medical duties to professional colleagues categorically states that, "*so far as the Council is concerned, the deputy is personally accountable for any neglect or disregard of professional responsibilities towards the patients of the doctor whom he or she is deputizing*".

It was the main contention of the Petitioner that the uniform position of the SLMC is contrary to the purported assertions in the impugned reasons set out in the report P7A.

It was further drawn our attention that the PPC's conclusion violates both the SLMC's guidelines and internationally recognized medical practices, such as those issued by NHS England and the General Medical Council (UK), which

specify that the prescribing doctor is responsible for their prescriptions. (vide P11)

Preliminary Objections raised by the Respondents:

Necessary Parties are not before the Court of Appeal: The virtual complainant, namely, the wife of the deceased Patient whose complaint marked as P7(A) is a necessary party to the case. Additionally, Dr. (Mrs.) Nawaz, House Officer in charge of the ward, the nurse who administered the Augmentin iv, overlooking the allergy of the deceased to the penicillin group of antibiotics. The impugned report of the PPC which is inclusive of Mrs. Ganepola's complaint are from pages 54 to 106 and form part of the document P7A.

The impugned report of PPC is a fact-finding inquiry report and the recommendations at page 106 does not by any means 'pin the entire and/or overall liability on the Petitioner. It states that a prima facie case for medical negligence had been made out against the Petitioner and Dr. Nawaz, the House Doctor. Thereafter, these findings of the PPC had been presented to the Professional Conduct Committee. (PCC) and PCC had made two decisions on 30th February 2025 to frame charges and hold a disciplinary inquiry against the two medical professionals. Thereafter, the charge sheet P8A had been issued to the Petitioner, and he was asked to appear before the PCC on 26.04.2025. Inquiry refixed for 31st May 2025. As such, the matter is currently pending before the PCC and the members of PCC are different the members of the PPC, who had been named as 3rd to 7th respondents and they are also necessary parties to the case for the purpose of effectively granting the interim reliefs as prayed for in prayers (h) and (i) and substantive relief (d) and (e) of the petition.

In ***The Ark Universal (Private) Limited v M. Umamagal, The Divisional Secretary Marintimepattu and 2 others***,[1] this Court (per Corea J.) has

1 CA (Writ) Application No. 56/2024, decided on 30.01.2025.

provided a very useful account on the present status of the law regarding necessary parties in writ applications in the following manner;

*"A necessary party to a Writ Application was defined by Gamini Amaratunga, J. in Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thera and 4 others* ***(2011) 2 SLR 258;***

> *1) "The first rule regarding the necessary parties to an application for a Writ of Certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made a Respondent to the application.*
>
> *2) The next rule is that* ***those who would be affected by the outcome of the Writ application should be made Respondents*** *to the application.*
>
> *3) A necessary party to an application for a Writ of Mandamus is the officer or the authority who has the power vested by law to perform the act or the duty sought to be enforced by the Writ of Mandamus.* ***All persons who would be affected by the issue of Mandamus also shall be made Respondents*** *to the application."* (the emphasis is added)

*In Rawaya Publishers and another v. Wijeyadasa Rajapaksa* ***(2001) 3 SLR 213*** *it was held,*

***"In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question***

*involved in the proceedings…* ***If they are not made parties then the petition can be dismissed in limine.*** *It has also been held that person vitality affected by the writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity (vide Prabodh*

*Derma v. State of Uttara Pradesh AIR 1985 – SC 167 also see Encyclopedia of Writ By P.M. Bakshi).""*

In the instant case, the petition itself states that the Petitioner reserves the right to add any party that may be determined to be necessary for the **purpose of full adjudication and determination of this application**, **or as the** pleadings/**circumstances disclose, or as directed to do so by this Court**.

In the circumstances, I am of the view that, for the full determination of this case, the parties indicated in the Preliminary Objections are necessary. I am not going to dismiss this application *in limine* but direct the Petitioner to make them parties in this case. Only thereafter an order regarding issuing formal notice and/or interim reliefs can be considered. The status-quo order made on 29.05.2025 is extended.

**Judge of the Court of Appeal**

**M.T. Mohammed Laffar, J.(Act.P/CA)**

I agree.

**Judge of the Court of Appeal**