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

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

Court of Appeal Case No.
CA/WRT/0056/2025

Samarakoon Mudiyanselage
Chaminda Prasad Samarakoon,
20A/1, Pilawala,
Gunnepana,
Kandy.

Petitioner

Vs.

1. **Ceylon Petroleum Corporation,**
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

2. **D. J. A. S. De S Rajakaruna**,
   Chairman,
   Ceylon Petroleum Corporation,
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

3. **Dr. Mayura Neththikumarage**,
   Managing Director,
   Ceylon Petroleum Corporation
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

4. **Honorable Attorney General**,
Attorney General's Department,
Colombo 12.

Respondents

Before: **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel	:	Mohamed Adamaly, P.C. with Kathya Seneviratne instructed by Shanya Wickramarathne for the Petitioner. Rajika Aluwihare, for the 1st to 4th Respondents.
Argument Concluded on	:	27.08.2025
Written Submissions of the Petitioner tendered on	:	03.09.2025
Written Submissions of the 1st to 3rd Respondents tendered on	:	04.09.2025
Decided on	:	03.10.2025

K. M. S. DISSANAYAKE, J.

This order relates to the clarification sought by the learned President's Counsel for the Petitioner as regards the effective date of the interim order issued

against the 1st, 2nd and 3rd Respondents by this Court on 31.01.2025 as prayed for in prayer b) of the petition of the Petitioner dated 29.01.2025 filed of record with its effective period limiting only for a period of 14 days from the date of the grant of the same on the application made to Court *ex-parte* by the learned President's Counsel for the Petitioner. The divergence of interpretation sought to be adverted to, by the respective Counsel for the Petitioner and the 1st, 2nd and 3rd Respondents had given rise to the instant application for clarification as regards the effective date of the interim order so issued by this Court in that it was maintained by the learned President's Counsel for the Petitioner that it is retrospective in its effect and hence, the interim order should relate back to the date of the interdiction of the services of the Petitioner, namely; on 03.01.2025 until its dissolution by Court on 13.01.2025, whereas, it was maintained by the learned State Counsel that it is prospective in its effect and therefore, interim order should be operative only from the day of the issuance of it by this Court namely; 31.01.2025 until its dissolution by this Court on 13.01.2025.

Hence, the principal question that would inevitably, arise for our consideration in the matter of clarification so sought by the learned President's Counsel for the Petitioner is with regard to its effectiveness of the interim order so issued by this Court, namely; whether it is retrospective in its effect; or else, whether it is prospective in its effect.

It is well established rule of interpretation that the general application of an interim order is always, prospective in its effect and therefore, not retrospective in its effect and one who asserts that such an interim order is retrospective in its effect, sole burden of proof is on the person so asserting to rebut the presumption against retrospectivity. This view taken by me would find immense support from the principle enunciated by Court in the decision in **Bandaranaike Vs. Weeraratne and Two Others (1978-79) 2 SLR 412** at pages 422 to 428.

It is in this backdrop, let me now, examine the nature of the interim relief sought by the Petitioner in prayer (b) of his petition and it may be reproduced *verbatim* the same as follows;

> "**For an interim order staying the decision of the 1st and/or 2nd and/or 3rd Respondents to interdict the Petitioner with half pay as set out in the letter marked (P19), and/or directing the 1st and/or 2nd and/or 3rd Respondents to make full payment of the Petitioner's salary and emoluments during the period of his interdiction;**".

A careful analysis of the interim relief so sought by the Petitioner in prayer (b) of the petition makes it abundantly, clear that, it is a mix of two interim orders of kind as sought together in single prayer of the petition by the Petitioner and they may, conveniently, be split into two as follows;

> 1) For an interim order staying the decision of the 1st and/or 2nd and/or 3rd Respondents to interdict the Petitioner with half pay as set out in the letter marked (P19);
>
> 2) For an interim order directing the 1st and/or 2nd and/or 3rd Respondents to make full payment of the Petitioner's salary and emoluments during the period of his interdiction;

It was submitted by the learned President's Counsel for the Petitioner in the course of the argument that even though the interim order prayed for in prayer b) in the petition has two limbs, the Respondents had opted to not comply with the 1st limb but, instead, to comply with the second limb and accordingly, when the Petitioner had reported for work on 05.02.2025, he had been informed to stay at home and that, his full salary and emoluments would be paid as per the second limb and having so decided to proceed with the second limb of the interim order as prayed for in prayer b) in the petition, the Respondents had only paid the Petitioner half of his salary and emoluments for

the period of 14 days in which the interim relief was in operation as well in blatant disregard and gross violation of the interim order granted by this Court. It was further submitted by the learned President's Counsel for the Petitioner in the course of the argument before us that, the first option requires the reinstatement of the Petitioner in service or require him to report to work and if the Respondents had picked the first option, then the interim order would only be prospective as it is a restraining order staying the effect of the letter **P19** interdicting him with half pay for; the compliance with such an order would necessarily, involve permitting the Petitioner to report back to work from the effective date of the interim order itself and however, the effect of the second limb is entirely, different for; it is not a restraining order but rather a mandatory order granting the affirmative interim relief requiring the Respondents to pay money in the form of salary and therefore, the second limb unlike the first limb would cover the entire period of interdiction and requires the payment of his full salary and emoluments during the entire period in as much as unlike the first limb, second limb is capable of retrospective effect for; it is worded to cover "the period of interdiction" which commenced on 03.01.2025 and since the interim order was valid upto 13.02.2025, the moment the interim order was issued salary from 03.01.2025 would become payable in terms thereof and that, this Court has made no indication whatsoever that the interim order is prospective only.

It was on the other hand, submitted by the learned State Counsel for the Respondents that the second limb of the interim order is prospective for; this Court had expressly limited the operation of the interim order only to a period of 14 days from the date of issuance of the same leaving no room for ambiguity as to its effective date; and that it was granted *ex parte* without the participation of the Respondents and in such circumstances it could not reasonably, have been the intention of this Court that, it has a retrospective effect thereby imposing financial obligation on the Respondents for a period

predating the application itself and that, the very purpose of an interim order is to ensure that the final relief if granted in favour of the Petitioner is not rendered nugatory and therefore, there is no necessity for this Court to issue an *ex-parte* limited interim order with retrospective effect in the first place.

For a precise ascertainment of its general application of an interim order so issued by this Court, namely; whether it is retrospective in its effect as contended by the learned President's Counsel for the Petitioner; or else whether it is prospective in its effect as contended by the learned State Counsel for the Respondents; It would I think, be necessary to carefully, peruse and examine the very words used by this Court at the time this Court decided to grant an *ex-parte* interim order as prayed for in prayer b) in the petition as enumerated above together with the surrounding facts and circumstances that were in existence at that time as can easily, and conveniently, be found in the minutes of Court pertaining to 31.01.2025.

In an attempt to precisely, ascertain the real intention of this Court that led this Court to have granted an *ex-parte* interim order as prayed for in prayer 'b' of the petition as enumerated above, the careful scrutiny of the very words used by this Court would no doubt, be very much useful and helpful and the very words used by this Court in granting the same as can clearly, be found in the minutes of Court pertaining to 31.01.2025, may be reproduced *verbatim* the same, as follows;

> " Learned President's Counsel informs this Court he has given notices to Respondents. As they are not before this Court, this Court issues an interim relief under prayer 'b' of the petition dated 29.01.2025 only for 14 days…."

Upon a careful scrutiny of the very words used by this Court as re-produced above, it clearly, appears that they are plain and simple and does not lead to any ambiguity and therefore, the question of interpretation of those words for

the purpose of construing the real intention of this Court with regard to the effective date of the limited interim order so issued by this Court on 31.01.2025, namely; whether it is retrospective in its effect as contended by the learned President's Counsel for the Petitioner; or else whether it is prospective in its effect as contended by the learned State Counsel for the Respondents; does not in any manner, arise before this Court as stated by S.G.G. Edgar in Craies on Statute Law (7th Edition) at page 64, as cited to us by the learned President's Counsel for the Petitioner in the written submissions and therefore, this Court is bound to adopt a literal and/or plain meaning that can be assigned to the very words used by this Court.

Hence, the literal meaning that should in my opinion, be assigned to the very words used by this Court, namely; "Learned President's Counsel informs this Court he has given notices to Respondents. As they are not before this Court, this Court issues an interim relief under prayer 'b' of the petition dated 29.01.2025 only for 14 days….", is that since, the Respondents were not before the Court, out of an abundance of caution and for the purpose of minimizing and/or the reducing any harm and/or any prejudice that might otherwise, cause to the Respondents by granting an *ex-parte* interim order in their absence before Court, this Court had granted an *ex-parte* interim order effective only for 14 days from the date of the grant of the same and therefore, the intention of the Court is manifest and becomes more clearer, by deliberately, using the operative words, namely; "Learned President's Counsel informs this Court he has given notices to Respondents. As they are not before this Court, this Court issues an interim relief under prayer 'b' of the petition dated 29.01.2025 only for 14 days…." that, the *ex-parte* interim order so granted only for 14 days should have only prospective effect and therefore, it should be effective only for the period of 14 days from the date of issuance of the same on 31.01.2025, namely; 13.02.2025, unless, the validity period of the limited *ex-parte* interim order was extended by Court at the expiry of it on 13.02.2025.

Hence, I would hold that this Court had clearly, intended that the *ex-parte* interim order so issued by this Court on 31.01.2025, ought to be operative prospective and not retrospective when it had used the very precise and deliberative set of words that "**As they are not before this Court, this Court issues an interim relief under prayer 'b' of the petition dated 29.01.2025 only for 14 days....**", as rightly, contented by the learned State Counsel for the Respondents. [Emphasis is mine]

I would, therefore, find myself unable to agree with the construction sought to be placed by the learned President's Counsel for the Petitioner with regard to the effectivity of the interim order so issued by this Court as aforesaid for; such a contention cannot sustain both in fact and law and as such, it ought to be rejected *in-limine*.

Besides, the very purpose of an interim order is to ensure that the final relief, if granted in favour of the petitioner is not rendered nugatory, as held by this Court in the case in **Duwaarachchi and Another Vs. Vincent and Others 1984[2] SLR 94** and **Ceylon Tobacco Company PLC Vs. Hon. Maithreepala Sirisena and Two Others-CA-WRIT-336/2012-Decided on 22.02.2013** and as rightly, contended by the learned State Counsel for the Respondents.

Hence, there is no necessity whatsoever for this Court to grant an *ex-parte* interim order expressly, limiting its effective period only for 14 days from the date of its grant as rightly, contended by the learned State Counsel for the Respondents.

Viewed in this light, it cannot in any manner, be said that interim order so issued by this Court is retrospective in its effect as contended by the learned President's Counsel for the Petitioner.

I am, therefore, not inclined to the construction sought to be placed by the learned President's Counsel for the Petitioner with regard to the effectivity of

the interim order so issued by this Court as aforesaid for; such a contention cannot sustain both in fact and law and as such, it ought to be rejected *in-limine*.

In the circumstances, I would feel obliged to the construction so sought to be placed by the learned State Counsel for the Respondents with regard to the effectivity of the interim order so issued by this Court as aforesaid for; such a contention can sustain both in fact and law and as such, it ought to be adopted by this Court.

In view of all the above circumstances, I would hold that, the *ex-parte* interim order so granted by this Court only for 14 days should have only prospective effect and therefore, it should be effective only for the period of 14 days from the date of issuance of the same on 31.01.2025, until it was dissolved by this Court on 13.02.2025 and therefore, the phrase contained in the interim order namely; "**during the period of his interdiction**" should be read and construed accordingly. [Emphasis is mine]

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL