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* and *Prohibition* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) application No: 800/2025

B. R. P. M. A. Devendra
57th Post Road, Thibbatuwewa,
Kekirawa

Presently at,
3/7, Larman St., Bentleigh East,
Victoria 3165, Australia.

PETITIONER

-Vs-

1. Sumith Dassanayake,
   Director General Human Resources and Mission Management,
   Ministry of Foreign Affairs, Foreign Employment and Tourism,
   Republic Building,
   Colombo 01.

2. Aruni Ranarajah,
   Secretary,
   Ministry of Foreign Affairs, Foreign Employment and Tourism,
   Republic Building,
   Colombo 01.

RESPONDENTS

Before: S. U. B. Karalliyadde, J.

Dr. D. F. H. Gunawardhana, J.

Counsel: Shantha Jayawardane with Shehara Herath for the Petitioner.

Sumathi Dharmawardena, PC, ASG with Abigail Jayakody, SC for the Respondents.

Supported the motion filed by both parties on: 30.09.2025

Order delivered on: 03.10.2025

S. U. B. Karalliyadde, J.

The Petitioner has filed this Application seeking *inter alia* a Writ of Certiorari quashing the letter dated 16.07.2025 marked as P4, containing the decision to conclude the duties of the Petitioner as the Minister at the Consulate General of Sri Lanka in Melbourne with effect from 15.08.2025 and a Writ of Prohibition prohibiting the Respondents from taking action to terminate the duties of the Petitioner prior to the conclusion of the three years as agreed upon in the agreement between the Government of Sri Lanka and the Petitioner, marked as P2.

When this matter was taken up for support on 07.08.2025, this Court heard oral submissions of the learned Counsel appearing for the Petitioner and the learned State Counsel appearing for the Respondents and thereafter issued formal notices on the Respondents. Then the matter was fixed for objections and support of the interim reliefs sought in the Petition on 18.09.2025. On 18.09.2025 application for the interim reliefs

were supported and having considered the submissions made on behalf of the both parties, this Court issued the interim reliefs prayed for in prayer (e) suspending the operation of P4 where the Petitioner was informed of the completion of his tour duty as the Minister at the Consulate General of Sri Lanka in Melbourne until the final determination of this Application and prayer (f) for an interim order prohibiting the Respondents from terminating the duties of the Petitioner as the Minister at the Consulate General of Sri Lanka in Melbourne until the final determination of this Application.

By the motion dated 19.09.2025, the Attorney General has informed this Court that an email was received from the Department of Foreign Affairs and Trade stating that the Petitioner's diplomatic visa has been cancelled by the Australian Government and moved to support the motion dated 19.09.2025 on 25.09.2025 to vacate the interim relief granted by this Court. Ultimately Court fixed the matter to support the motions on 30.09.2025.

The learned Additional Solicitor General (ASG), appearing for the Respondents, submitted that the Petitioner, a public officer belonging to the Sri Lanka Administrative Service, entered into a contract (marked P2) with the government of Sri Lanka for an appointment as the Minister at the Consulate General of Sri Lanka in Melbourne. It was further submitted that, in terms of Chapter 18 of the Procedural Rules of the Public Service Commission, published in Gazette Extraordinary No. 2310/29 dated 14.12.2022, a public officer who is dissatisfied with a transfer is required to prefer an

appeal to the Public Service Commission. Therefore, the learned ASG has drawn the attention of the Court that the Petitioner, being an officer, belongs to the Sri Lanka Administrative Service, without complying with the procedural rules of the Public Service Commission regarding his grievance, has come before this Court and has obtained interim orders without complying with P4. Therefore, the learned ASG argued that the Petitioner has failed to follow the principle of comply and complain under the administrative law.

The learned ASG further submitted that the diplomatic visa of the Petitioner had been revoked prior to the issuance of interim relief by this Court on 18.09.2025. The attention of the Court was drawn to Annexures II and IV of the document marked X, filed with the motion dated 24.09.2025. Annexure II is an email dated 15.09.2025 from the Protocol Officer, notifying that the Petitioner's diplomatic accreditation had been cancelled with effect from 15.08.2025, and that he no longer holds any diplomatic status. It was further submitted that the Protocol Guidelines referred to in Annexure IV apply to the Petitioner. These guidelines specify that for visa and accreditation, all diplomatic and consular officials must be formally nominated and accepted by the Australian Government prior to their arrival in Australia for official duties. Additionally, diplomatic accreditation of consular staff is subject to compliance with the Vienna Convention on Diplomatic Relations. Accreditation is granted only to individuals who are nationals of the sending State and have been officially appointed by that government. The learned ASG invited the Court's attention to Article 41 of the

Vienna Convention, which provides that, "*without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privilege and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of the State*". Accordingly, the ASG contended that maintaining the Petitioner's diplomatic status despite its revocation by the Ministry of Foreign Affairs and the cancellation of his visa could adversely affect the ability of other consular staff to obtain visas from the Australian Government. It is submitted that such a situation constitutes a violation of Article 41 of the Vienna Convention and creates a diplomatic impasse, thereby hindering the Government's ability to effectively discharge its functions at the Consulate General's Office in Melbourne.

The position taken by the learned Counsel appearing for the Petitioner is that the interim reliefs were granted after supporting the application *inter parte*, and that the Respondents, without complying with the said interim order, proceeded to file the motion dated 19.09.2025. The Petitioner submits that, when the interim reliefs were supported on 18.09.2025, the Respondents had possessed the documents which were tendered later to the Court by way of a motion, but did not file them along with their formal objections dated 17.09.2025. The learned Counsel for the Petitioner further submitted that the Respondents have brought the attention of Court on cancellation of diplomatic visa of the Petitioner and his family members, the Court nevertheless granted interim reliefs as prayed for by the Petitioner and therefore, the facts now being relied upon by the Respondents were already within their knowledge by the 18.09.2025,

and cannot now be used to get vacated the interim order. It was further submitted that there has been no material change in circumstances since the granting of the interim reliefs. Furthermore, citing Article 39(1) of the Vienna Convention, the learned Counsel appearing for the Petitioner argued that the receiving state can issue a visa at the moment the appointment is notified to the Ministry of Foreign Affairs. Therefore, the Respondents were duty-bound to comply with the interim order by taking appropriate steps to prevent the cancellation of the Petitioner's visa by requesting to reissuance of visas. The learned Counsel for the Petitioner further argued that this Court cannot vacate the interim order already issued, and the remedy available for the Respondents is to appeal against the Interim orders made by this Court.

Even though the oral submissions of the learned Counsel consist of matters which should be considered at the argument stage, the Court will now consider only the submissions pertaining to this application.

First and foremost, this Court will address whether this Court can vacate an interim relief already granted by this Court. The rules relating to the granting of interim reliefs by this Court are governed under Rule 2 of the Court of Appeal (Appellate Procedure) Rules 1990. Rule 2(6) gives power to this Court to vacate or vary interim relief already granted. Rule 2(6) reads as follows,

> "*Upon sufficient cause being shown an order for interim relief may be varied or set aside by the same or another bench or Judge, as the case may be of the Court.*

The failure to comply with an order under the preceding sub-rule shall constitute sufficient cause as aforesaid."

Considering Rule 2(6) of the Court of Appeal (Appellate Procedure) Rules, this Court cannot agree with the argument of the learned Counsel appearing for the Petitioner that this Court has no power to vacate interim relief already granted, and the remedy available to an aggrieved party is to prefer an appeal to vacate the interim order.

When the motion dated 19.09.2025, seeking to vacate the interim relief, was supported, a question arose as to whether the Petitioner was aware of the cancellation of his diplomatic visa at the time he supported the application for interim relief on 18.09.2025. As a reply to this question, the learned ASG appearing for the Respondents brought to the attention of the Court the following facts. Firstly, in the letter of appointment of the Petitioner as the Minister dated 08.08.2024 marked as P1, paragraph 12 states that,

"*Immediately after completion of your tour of duty, you should surrender the Diplomatic Passports issued to you and your family members and Official Passport issued to your Service Assistant as applicable, to the Director General of Overseas Assets Management and Development of this Ministry to be forwarded to the Controller General/Immigration & Emigration, for cancellation*."

Secondly, in the letter dated 16.07.2025 marked P4, issued under the heading of "completion of the Tour of Duty as Minister at the Consulate General of Sri Lanka in

Melbourne", the Petitioner has been informed that his tenure as Minister has been concluded with effect from 15.08.2025. This letter was also communicated to the High Commission in Canberra and the Consulate General in Melbourne. Therefore, the learned ASG contended that the Petitioner was well aware, at the time of supporting the application for interim reliefs, that his diplomatic status had effectively ceased as of 15.08.2025. In terms of paragraph 12 of P1, he was obligated to surrender his diplomatic passport upon completion of his tour of duty. The learned ASG further submitted that a party who approaches the Court is bound by the principle of *uberrima fides* and must make full and frank disclosure of all material facts. It was argued that the Petitioner obtained the stay order by misrepresenting the facts, thereby misleading the Court and suppressing the material facts.

It is trite law that a person seeking discretionary remedy from this Court by way of invoking its writ jurisdiction has to come with clean hands and owes a duty of utmost good faith (*uberrima fides*). In the case of *Alponso Appuhamy v. Hettiarachchi,*[1] Pathirana, J. held that,

> "*when an application for a prerogative writ or an injunction is made, it is the duty of the petitioner to place before the court, before it issues notice in the first instance a full and truthful disclosure of all the material facts, the petitioner must act with Uberrima Fides*"

[1] 73 NLR 131

In *Jayasinghe v. The National Institute of Fisheries and Nautical Engineering (NIFNE) and Others,*[2] the Supreme Court held that,

> "*the conduct of the petitioner in withholding these material facts from court shows a lack of Uberrima fides on the part of the petitioner. When a litigant makes an application to this court seeking relief, he enters into a contractual obligation with the court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly. This is a duty cast on any litigant seeking relief from court*."

The question before this Court is whether the Petitioner failed to approach this Court with *uberrima fides*. When the question arose as to whether the Petitioner was aware of the cancellation of his diplomatic visa at the time of moving for interim reliefs, the learned Counsel for the Petitioner submitted that the learned State Counsel, who appeared on 18.09.2025, had made submissions regarding the cancellation of the diplomatic visa; nevertheless, this Court has granted the interim relief sought by the Petitioner. However, it is the view of this Court that, at the time of supporting the application for interim relief, no documents were placed before the Court to establish that the Petitioner's diplomatic visa had in fact been cancelled. Accordingly, this Court proceeded to issue the interim relief prayed for by the Petitioner. The learned ASG appearing for the Respondents has admitted that the Respondents failed to produce the

[2] 2002 1 Sri L.R. 27

necessary documents regarding that issue at that stage. The learned ASG nevertheless contended that, notwithstanding such omission, the Petitioner was under a duty to disclose all material facts and to act with *uberrima fides*.

This Court observes that the letter of appointment marked P1, together with the letter marked P4 informing the Petitioner of the conclusion of his duties as Minister, demonstrate that the Petitioner was aware that his diplomatic status would end on 15.08.2025. The question that arises, therefore, is whether this Court would have granted the interim relief had sufficient material been produced at the outset to establish that the Petitioner's diplomatic visa had been cancelled at the time the application was supported. This Court answers that question in the negative for the following reasons.

As noted, the Petitioner had knowledge that his diplomatic status had ceased by 15.08.2025. The diplomatic accreditation of the Petitioner was, in fact, cancelled with effect from that date, as evidenced by Annexure II to the document marked X filed with the motion dated 24.09.2025. It is therefore clear that, at the time interim relief was sought, the Petitioner no longer held diplomatic status. Although the Petitioner contended that the cancellation of his diplomatic visa was irrelevant to the relief prayed for, and that he currently holds a bridging visa, this Court cannot accept that contention. The Protocol Guidelines (Annexure IV) explicitly require that the visa and accreditation of diplomatic and consular officials be formally nominated and accepted by the Government of Australia prior to their travel. Further, under Article 41 of the Vienna Convention on Diplomatic Relations, all persons enjoying diplomatic privileges and

immunities are obliged to respect the laws and regulations of the receiving State. Consequently, for the Petitioner to lawfully remain in office as the Minister at the Consulate General of Sri Lanka in Melbourne until the final determination of this Application, he must hold a valid diplomatic visa, which had already been cancelled. Furthermore, it is the view of this Court that the Petitioner's reliance on Article 39(1) of the Vienna Convention is misconceived as that provision concerns the commencement of privileges and immunities following appointment, and does not govern the issuance of diplomatic visas.

Considering all the above-stated facts and circumstances, this Court is satisfied that sufficient cause has been shown by the learned ASG appearing for the Respondents to vacate the interim order granted under Rule 2(6) of the Court of Appeal (Appellate Procedure) Rules.

For the aforementioned reasons, this court dissolves the stay orders dated 18.09.2025 issued against the Respondents.

JUDGE OF THE COURT OF APPEAL

Dr. D. F. H. Gunawardhana, J.

I agree.

JUDGE OF THE COURT OF APPEAL