

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

*In the matter of an application for mandates in
the nature of Writs of Mandamus under and in
terms of Article 140 of the Constitution.*

Court of Appeal Writ
Application No:

CA/WRT/209/2025

Ven. Pahamune Sumangala Nayaka
Thero,
The Chief Registrar of the Malwatta
Chapter,
Pahamune Temple,
Malwatta Maha Viharaya, Kandy

AND ALSO,
The Incumbent Viharadipathi,
Somawathie Raja Maha Viharaya,
Polonnaruwa.

PETITIONERS

S. Aloka Bandara,
Secretary,
Ministry of Public Administration,
Home Affairs, Provincial Councils and
Local Government,
Independence Square,
Colombo 07

AND OTHERS

RESPONDENTS

Before: Hon. Justice N. R. Abeysuriya PC (P/CA)

Hon. Justice K. P. Fernando

Counsel: Sanjeewa Jayawardena PC for the Petitioner

Manohara Jayasinghe D.S.G and Shemanthi Dunuwille, S.C. for the Respondents.

Supported On: 27/06/2025

Decided On: 26/08/2025

N. R. Abeysuriya, PC, J.

The petitioner has filed this application seeking *inter alia* the following reliefs:

- a) A writ of certiorari to quash the impugned recommendations of the 6th Respondent dated 11.03.2024
- b) A writ of prohibition restraining the 1st to 5th respondents from proceeding further or taking action in pursuance or in furtherance of the recommendations made by the 6th Respondent dated 11.03.024 marked P8

The facts of this matter very briefly are as follows:

On 02.09.2023 the 7th Respondent has made a complaint to the Human Rights Commission of Sri Lanka i.e the 6th Respondent bearing no. HRC/3704/23 alleging that the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa (hereinafter sometimes referred to as the Kotte Chapter) has not received the same rights, privileges and benefits accorded to the Malwattu and Asgiri Chapters of the Siam Nikaya (Shyamopali Maha Nikaya) and the other main nikayas. The 7th Respondent has sought an order from the HRC to accord the status currently accorded to the Malwattu and Asgiri nikayas.

Upon the receipt of the said complaint of the 7th Respondent, the HRC conducted an inquiry and in its determination dated 11.03.2024 made the following recommendations:

- a) Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa be consulted in all matters where the opinion of Malwathu and Asgiri Sangha Sabha of the Siam Nikaya are sought;

- b) Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa be afforded sufficient representation in the appointment of the Consultation Panels of the State in respect of matters related to Buddhism;
- c) Appropriate seating arrangements be provided to Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa at State functions;
- d) State sponsorships be granted to the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa for conducting Mahanayake Credential ceremonies, cremation ceremonies, ordainment and higher ordainment ceremonies;
- e) Financial support be given to the Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa on par with that was provided to the other main Nikaya Sects;
- f) Kotte Sri Kalyani Samagri Dharma Maha Sangha Sabhawa be accorded equal privileges in nominating representatives for foreign trips and other related facilities;

The aforesaid recommendations are contained in the document marked P8.

The petitioner has contended that the said recommendations of the HRC are *inter alia ex facie* arbitrary, capricious, and irrational.

In the proceedings before the HRC, prior to it making the aforesaid recommendations, the Malwattu and Asgiri chapters were not made parties nor had been notified of the proceedings before it. The petitioner contends that this is a blatant violation of rules of natural justice i.e *Audi Altarem Partem* since the Petitioner is directly aggrieved by the said recommendations.

Sec 18(1) of the Human Rights Commission Act No. 21 of 1996 has vested sweeping powers on the HRC to procure and receive evidence written or oral of any person as witnesses if the Commission deems it necessary or desirable to procure and examine such testimony.

The Petitioner contends that notwithstanding such powers being conferred on the Commission, it has failed to summon representatives of the Malwattu and Asgiri Chapters to testify before it.

On the requirement of the affected party should be heard, the case of **Jayawardena vs. Dharani Wijayatilake, Secretary Ministry of Justice and Constitutional Affairs and Others (2001) 1 SLR 132** may be considered. In this case, the court cited **Gratien J in de Mel vs. de Silva (1949) 51 NLR 282** expressly approving the observations in the case of **General Medical Council vs. Spackman [1943] AC 627** in which it was held that; "... *It must give the party who may be affected by its decision an opportunity of being heard and of stating his case. ...In other words, 'the essential requirements of justice and fair play' must be observed....*"

It seems that the Petitioner has sought to intervene in the proceedings held before the HRC, subsequent to the impugned recommendations at P8 being made. The Petitioner and the Chief Registrar of the Asgiri Chapter made an application dated 16.04.2024 to intervene in the proceedings before the HRC with regard to the complaint of the 7th Respondent bearing no. HRC/3704/23. A copy of the said application for intervention is marked P9.

The intervenient petitioners *inter alia* sought the following reliefs;

- a) Set aside/ vacate the recommendations dated 11.03.2024 made by the Human Rights Commission forthwith and / or,
- b) Suspend the implementation of the said recommendations forthwith and add the Malwatta and Asgiriya Chapters of the Siam Nikaya and/or their representatives as parties to the further proceedings before the HRC.

Upon the consideration of the aforesaid application for intervention, the HRC provided an opportunity for the petitioner and representatives of the Asgiri Chapter to make representations to the HRC and a meeting was scheduled for 16.08.2024 at the HRC to enable all parties concerned including the petitioner to make submissions. This is evidenced from document marked P12 signed by the Secretary, HRC.

It also seems that the 7th Respondent had not participated in any proceedings of the HRC subsequent to the issuance of the impugned recommendations dated 11.03.2024.

Prior to the HRC making a final determination with regard to the application for intervention, the 7th Respondent filed a writ application before this Court bearing no. CA/WRT/604/2024 seeking a writ of mandamus compelling the Respondents to implement the impugned recommendations made by the 6th Respondent on 11.03.2024. This move on the part of the 7th Respondent effectively prevented the 6th Respondent from entertaining/ considering the representations of the Petitioner and the Asgiriya Chapter with regard to the impugned recommendations. A copy of the aforesaid CA/WRT/604/2024 is marked P13.

Even in the said writ application, neither the petitioner nor the Asgiriya Chapter was cited as Respondents. Both the petitioner and the Asgiriya Chapter sought to intervene in the said writ application and the order with regard to such intervention is pending.

In his submissions, the counsel for the Petitioner enlightened this court on the historical background of the Malwattu and Asgiri Chapters of the Siam Nikaya and reiterated that the Kotte Sri Kalyani Samagri Sangha Sabhawa is in fact not a separate distinct nikaya but is a break-away faction of the Malwattu chapter. Counsel contended that originally a group of monks of the Malwattu Chapter separated from it and formed the Kalyani Samagri Dharma Sangha Sabhawa due to the difficulty of travelling to the up country from low country. In the mid 19th century, the said Sabhawa commenced providing higher ordination to the Buddhist monks in the low

country without appointing any Mahanayake or Anunayake; it remained as an Upasampada Sangha Sabhawa. It was also submitted by Counsel that the Kotte Sri Kalyani Samagri Sangha Sabha is a break-away faction of the aforesaid Kalyani Samagri Dharma Sangha Sabhawa.

The principal contention of the Petitioner is that if equal recognition is granted to the Kotte Sri Kalyani Samagri Sangha Sabha similar to that of Malwattu and Asgiri Chapters, it would inevitably lead to the fragmentation of the Buddha Sasana which is undesirable and contrary to State Policy as enshrined of the Constitution.

In response, the learned State Counsel appearing for the Respondents submitted that giving recognition to the Kotte Chapter would not erode the status of the Malwattu and Asgiri Chapters. Counsel for the Respondents further submitted that the HRC being a secular statutory body could not have foreseen that the impugned recommendations made on 11.03.2024 would cause prejudice in any way to the Malwattu and Asgiriya Chapters. It was also the contention of the Respondents that the instant matter is a dispute of an ecclesiastical nature which ought not to be resolved through judicial intervention.

It should be noted that the 7th Respondent was absent and unrepresented in the instant matter in the proceedings before this Court notwithstanding direct notices been served on him.

In the aforesaid circumstances, this court has to determine as to whether formal notices should be issued on the Respondents.

In this regard, two aspects warrant consideration.

- a) Is the petitioner a party aggrieved by the impugned recommendations of the HRC dated 11.03.2024 and if so, whether an opportunity was afforded for the petitioner to be heard?
- b) Whether the petitioner has made out a '*prima facie*' case?

In the case of **G. P. A. De Silva and Others vs. Sadique & Others (1978-79-80) 1 SLR 166** the court held thus; "*A Writ of Certiorari will lie to quash an order or decision which is of binding effect and it either imposes an obligation or involves civil consequences to a person or alters his legal position to his disadvantage, or where such order or decision is a step in a statutory process which would have such effect. The order or decision might be of a body which had legal authority to determine questions affecting rights. It is not essential that the body should be established by Statute (provided it is not merely a private or domestic tribunal) or that the rights must necessarily be rights which are enforceable by action..... Before any lawfully constituted body arrives at a finding in respect of any person, it is necessary that such body should give a fair hearing to the person concerned. The principle audi alteram partem is one that is widely applicable.*"

In **Sudakaran vs. Bharathi (1989) 1 SLR 46** His Lordship Justice A.R.B. Amarasinghe recalls the words of **Lord Wright** in **General Medical Council vs. Spackman [1943] AC 627** that; *"If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from essential principles of justice. The decision must be declared no decision"*

This court is satisfied that upon the consideration of the facts of this case, although the status of the Petitioner may not be diminished by according parity status to another nikaya, the Petitioner is nevertheless an aggrieved party who ought to be heard in a situation where another nikaya is to be granted equal status. One consequence which may be detrimental to the petitioner would be loss of primacy and therefore their views ought to be considered. In the instant matter, an opportunity was not given to the Petitioner to be heard. This situation would invariably lead to the denial of natural justice i.e *audi altarem partem* which is and ought to be the cornerstone of administrative law and a fundamental consideration in the issuance of the writ of certiorari.

With regard to the issuance of notice to the Respondents, **Rule 3(3) and (4)** of the **Court of Appeal (Appellate Procedure) Rules of 1990** are applicable. Both the two sub rules are reproduced below.

(3) Every application which is accepted and registered shall be listed for support in open Court within two weeks of registration.

(4) Where upon such application being supported, the Court orders the issue of notice-...

In the case of **Ensen Trading & Industry (Pvt) Limited vs. Minister of Finance & Mass Media and Others** decided on 1st April 2019¹, His Lordship Justice Arjuna Obeysekere has expressed the view that the effect of Rule 3(4) is that court will issue formal notice only if Court is satisfied that the Petitioner has made out a "*prima facie* case".

What would amount to a *prima facie* case was extensively considered by the Supreme Court in **Milani Kariyawasam vs. Nambukara Wakwellagamage**² decided on 1st October 2013. In ascertaining as to whether the relevant party has made out a *prima facie* case, the court opined that "*it must appear that the probabilities are such that plaintiff is entitled to a judgment in his favor*". Furthermore, the Supreme Court expressed the following views.

"In other words the plaintiff must show that a legal right of his is being infringed and that he will probably succeed in establishing his rights. A prima facie case does not

¹ CA Writ No 41/2019

² SC Appeal No 33A/2012

mean a case which is proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed and accepted.”

In the case of **Martin Burn Ltd., v. R. N. Banerjee, (AIR) 1958 SC 79 at 85**: the Supreme Court of India (Bhagwati, J) had outlined the ambit and scope of the connotation "*prima facie* case" as follows:-

"A *prima facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. *While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.*"

In **Jinadasa vs. Weerasinghe (1929) 31 NLR 33**, with regard to the concept of establishing a *prima facie* case, **Dalton J** held thus;

"In such a matter court should be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that the plaintiffs are entitled to relief"

In the aforementioned SC Appeal, the principal issue under consideration was granting interim injunctions. However, the observation made by the Court regarding the phrase "*prima facie*" extend beyond that context and are applicable to any situation in which the establishment of a *prima facie* case is required.

In the case of **Felix Dias Bandaranaike vs. The State Film Corporation (1981) 2 SLR 287 Soza J**, the court held that;

"In Sri Lanka, we start off with a prima facie case that is, the applicant for an interim injunction must show that there is a serious matter in relation to his legal rights, to be tried at the hearing and that he has a good chance of winning. It is not necessary that the Plaintiff should be certain to win. It is sufficient if the probabilities are he will win."

Upon the consideration of the aforementioned judicial authorities, I am of the view that, the petitioner in the instant matter has established a *prima facie* case warranting the issuance of notice on the Respondents.

Formal notices to be issued on the Respondents.

PRESIDENT OF THE COURT OF APPEAL

K. P. Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL