

**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 Prohibition and Mandamus in
terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

Court of Appeal Writ
Application No:

CA/WRT/712/2025

Jayasekara Withanage Ruwan Chamara,
(Alias Midigama Ruwan),
Dolosgodawatta,
Ibbawala,
Weligama.
(Currently detained at Boossa Prison)

PETITIONER

vs

1. The Assistant Superintendent of Prison,
Boossa Prison,
Boossa, Galle.
2. Acting Commissioner General of Prisons,
Prison Headquarters,
No 150,
Baseline Road, Colombo 09.

AND 05 OTHERS

RESPONDENTS

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

Hon. Justice K. P. Fernando

Counsel: Pradeep Mahamuthugala for the Petitioner instructed by Jaliya Samarasinghe

Shanil Kularathne PC A.S.G for the Respondents.

Supported On: 17/07/2025

Decided On: 04/09/2025

N. R. Abeyesuriya, PC, J. (P/CA),

The facts of this case briefly are as follows,

The Petitioner of this matter is a prisoner who is currently incarcerated at the Boossa Prison. As disclosed in the Petition itself, he has several criminal cases pending against him for committing offences of attempted murder, criminal intimidation, two cases of murder, causing mischief to vehicles, attempted robbery of firearms from the police, theft of firearms from the production room of the Matara Magistrate's Court and possession of firearms and ammunition.

The Petitioner has disclosed that he was extradited to Sri Lanka pursuant to a red notice issued by Interpol. The principal contention of the Petitioner is that he has been subjected to frequent and arbitrary searches even at irregular hours by personnel attached to the Police Special Task Force (STF) inside the Boossa Prison. He further alleges that there also have been acts of intimidation and physical/ psychological abuse being committed during such searches. The Petitioner has contended that deployment of STF officers is *ultra vires* of the provisions of the Prisons Ordinance.

He has *inter alia* prayed for the following reliefs,

- I. Issue a mandate in the nature of a writ of Prohibition restraining the 1st to 4th Respondents, their subordinate officers, servants, agents or individuals acting under their authority, the continued deployment and operation of the Special Task Force (STF) within the internal premises of Boossa Prison.
- II. Issue a mandate in the nature of a writ of *Mandamus* directing the relevant Respondents to ensure that all custodial and disciplinary functions within Boossa Prison are carried out exclusively by officers of

the Department of Prisons in accordance with the Prison Ordinance and applicable regulations.

The Petitioner also contends that the Boossa Prison is currently classified as a High Security Prison and such description/classification is irregular and as such not valid. With regard to the aforesaid “classification”, the Petitioner states that there is no documentary proof of the declaration to the effect that the Boossa Prison has been so classified and as per the Petition of the Petitioner, there is only a verbal declaration at a function by the Commissioner General of Prisons. The fact that there is no gazette notification or any such document declaring the Boossa Prison as a High Security Prison is not in dispute since both the Petitioner and the Respondents have admitted the non-existence of such documents. In the aforesaid circumstances this Court is unable to consider the legality of such non-existent classification.

It does appear from the pleadings filed by the Petitioner that the only issue which warrants consideration by Court in the instant writ application is the “legality” of the deployment of STF personnel for the purpose of conducting searches on the Petitioner.

In response to the submissions of the Petitioner, the Learned Additional Solicitor General on behalf of the Respondents apprised Court the circumstances under which the officers of the STF were deployed to conduct a search. It is his contention that information was received by the STF to the effect that a detainee at the Boossa Prison was with the aid of a mobile phone conspiring to commit certain crimes. Upon the receipt of such information, it was promptly conveyed to the relevant officers of the Department of Prisons and on the instructions of the Assistant Superintendant of the Boossa Prison and in the company of a Jailer, the search was conducted on the 16th of January 2025. These facts are evidenced from the notes maintained in the IBEs of the STF contingent deployed at the Boossa Prison marked P3 and P4. As per P4, the information received by the STF specifically refers to the Petitioner. The STF officers have recovered a Samsung smart phone from the Petitioner which was in his possession at the time of the raid. Upon further inspection of the prison cell of the Petitioner, the STF officers have recovered another mobile phone and certain accessories generally used with mobile phones. It is also disclosed in P4, that although initially the STF officers had commenced to video record the search of the Petitioner, the Assistant Superintendant of the Boossa Prison had advised the STF against video recording the search. Acting on such advice, the STF has discontinued such recording.

After the arrest, the Petitioner has indicated to the STF officers that he wishes to consult his legal counsel.

The learned Additional Solicitor General submitted to Court that the duties performed by the STF are well within the scope and ambit of the provisions of the Prisons Ordinance and Police Ordinance. In support of this contention, he has primarily relied on **Sec. 77(5) of the Prisons Ordinance** which reads thus;

“Every police officer who is for the time being engaged in escorting any prisoner or prisoners, or in guarding any prison or other place where prisoners are confined or employed, or in assisting in the quelling of any disturbance or violence on the part of any prisoners, or in recapturing any escaped prisoner, shall be deemed to have all the powers and rights granted by this section to prison officers.”

The legal provision reproduced above bears testimony to the fact that even under the Prisons Ordinance, police officers are empowered to perform various duties which otherwise should be performed by prison officers.

Furthermore, it was the contention of the Respondents that what the STF officers in the instant matter had actually done is merely to conduct an “investigation” with regard to credible information pertaining to the Petitioner which any police officer is empowered to do.

In this regard, it maybe pertinent to allude to **Sec 56 of the Police Ordinance**,

“Every police officer shall for all purposes in this Ordinance contained be considered to be always on duty, and shall have the powers of a police officer in every part of Sri Lanka, It shall be his duty,

(a) to use his best endeavors and ability to prevent all crimes, offences, and public nuisances ;

(b) to preserve the peace ;

(c) to apprehend disorderly and suspicious characters ;

(d) to detect and bring offenders to justice ;

(e) to collect and communicate intelligence affecting the public peace ; and

(f) promptly to obey and execute all orders and warrants lawfully issued and directed to him by any competent authority.”

If this Court were to hold that Police Officers, be it STF or the Police regular force, cannot conduct investigations inside a prison in a situation where there was reasonable suspicion of an offence being committed/ planned, it would lead to an absurdity.

The Petitioner in his Petition has prayed for writs of *mandamus* and prohibition.

Halsbury¹ defines *mandamus* as follows,

“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from High Court of justice, directed to any person, corporation or inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of public duty. Its purpose is to remedy the defects of justice, and accordingly it will issue to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing the right and it may issue in cases where although there is an alternative legal remedy yet the mode of redress is less convenient, beneficial and effectual”

The essentials of a Writ of *mandamus* may be laid down as follows,

- I. The petitioner must have a legal right
- II. The respondent should have a legal duty
- III. The petitioner has no other efficacious alternative remedy
- IV. There had been demand and refusal of the legal right
- V. The petition is filed in *bona fide* and in good faith

A Writ of *mandamus* is issued to **compel** a public authority or official to **perform a legal duty** which they have **refused or neglected** to perform. The purpose is to enforce performance of **public or statutory duty**.

It is also important that a person seeking the writ of *mandamus* must come to court with clean hands and with *bona fide* intention but it cannot be issued to gratify personal malice or ill-will.²

In **J. W. De Alwis vs. V. C. de Silva**³ it was held that:

“A writ of mandamus could not be issued because no statutory duty of a public nature was owed by the respondent to the Petitioner”

¹ Halsbury's Laws of England, 4th Ed., Vol.1, para 89, p.111

² A.N.Shastri V State of Punjab AIR 1988 SC 404

³ (1967) 71 NLR 108

The same view was expressed by **Dr. Ranaraja J** in **Wickramasinghe vs. Ceylon Electricity Board and Another**,⁴ who held thus,

“The general rules of mandamus are that its function is to compel a public authority to do its duty. It is a command issued by a superior court for the performance of a public legal duty. It is only granted to compel the performance of duties of a public nature”

I have also considered two other judgments which are of relevance to the instant matter,

In **Perera vs. National Housing Development Authority (2001) 3 SLR 50** the Court held thus;

“On the question of legal right, it is to be noted that the foundation of mandamus is the existence of a right. Mandamus is not intended to create a right, but to restore a party who has been denied his right to the enjoyment of such right. A “Mandamus” will lie to any person or authority who is under a duty (Imposed by statute or under common Law) to do a particular act, if that person or authority refrains from doing the act or refrains for wrong motives from exercising a power which is his duty to exercise. The Court will issue a Mandamus to do what he should do. (R v. Metropolitan Police Commissioner⁵)”

In **A. M. Podihamine vs. T. P. A. Hemakumara and Others CA (Writ) Application No 69/2013 decided on 31.01.2019** Obeyesekere, J. held as follows,

“the foundation of Mandamus is the existence of a legal right to a statutory duty. Where the applicant has sufficient legal interest and the officials have a public duty but have failed to perform such duty. However, a writ of Mandamus is not intended to create a right but rather to restore a party who has been denied enjoyment of the said right.”

In the instant matter, the Petitioner has prayed for a Writ of *Mandamus* directing the relevant Respondents to ensure that all custodial and disciplinary functions within Boossa Prison are carried out exclusively by officers of the Department of Prisons in accordance with the Prisons Ordinance and applicable regulations.

⁴ (1997) 2 SLR 377

⁵ (1953) 2 All ER 717 at 719

The issue to be determined is as to whether the Respondents owed a public duty to the Petitioner to refrain from utilizing STF personnel to conduct a search consequent to information received with regard to the possible commission of criminal offences. This is in contrast to daily routine tasks which are expected to be carried out by the respective officers of the Department of Prisons. The Petitioner has failed to establish the fact that as of routine practice, the STF officers are deployed regularly to perform tasks which under the provisions of the Prisons ordinance ought to be performed by Prison Officers. There's no proof submitted to Court with regard to the regular occurrence of similar searches or such other acts. Any police officer should be allowed to conduct criminal investigations even inside prisons.

In the aforesaid circumstances this court is of the view that there is no justification in issuing a Writ of *Mandamus* in the instant matter.

The Petitioner has also prayed for a mandate in the nature of a writ of prohibition restraining the 1st to 4th Respondents their subordinate officers, servants, agents, or individuals acting under their authority, the continued deployment and operation of the Special Task Force within the internal premises of Boossa Prison.

The principles governing the writ of prohibition have been laid down by **Supreme Court of India in Govinda Menon vs. Union of India**⁶ as follows:

“The jurisdiction for grant of a writ of prohibition is primarily supervisory and the object of that writ is to restrain courts or inferior tribunals from exercising a jurisdiction which they do not possess at all or else to prevent them from exceeding the limits of their jurisdiction. In other words, the object is to confine courts or tribunals of inferior or limited jurisdiction within their bounds. It is well settled that the writ of prohibition lies not only for excess of jurisdiction or for absence of jurisdiction but the writ also lies in a case of departure from the rules of natural Justice (see Halsbury's Laws of England, 3rd Ed., vol. II, p.114).....But the writ does not lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings. It is also well established that a writ of prohibition cannot be issued to a court or an inferior tribunal for an error of law unless the error makes it go outside its jurisdiction.....A clear distinction must, therefore, be maintained between want of jurisdiction and the manner in which it is exercised. If there is want of jurisdiction then the matter is coram non-judice and a writ of Prohibition will lie to the court of inferior tribunal forbidding it to continue proceedings therein in excess of its jurisdiction”

⁶ AIR 1967 SC 1274

In the case of **Bandaranaike vs. Weeraratne and Two Others**⁷, the Court made the following observations,

"We have now to consider the grounds on which Prohibition can be granted. Of the several grounds, one which is well recognized by Administrative Law is "Lack of Jurisdiction," "Jurisdiction may be lacking if the tribunal is incompetent to adjudicate in respect of the parties, the subject matter or the locality in question; or if the tribunal, although having jurisdiction in the first place, proceeds to entertain matters or make an order beyond its competence." **Judicial Review of Administrative Action by S. A. de Smith** (2nd Ed: p. 407).

The same author goes on to state:

"A tribunal does not go beyond its jurisdiction merely by making a decision that is erroneous in law or fact or even one that is wholly unsupported by evidence. But if the tribunal's error relates to a collateral or preliminary matter upon which its jurisdiction depends, then certiorari may issue to quash its decision or prohibition may issue to prevent it from proceeding further." (at page 408)."

In other words, a Writ of prohibition will issue to prevent a Tribunal or authority from proceeding further when the authority proceeds to act without or in excess of jurisdiction, proceeds to act in violation of rules of natural justice, or proceeds to act under a law which is itself *ultra vires* or unconstitutional.

In his monumental work titled **Principles of Administrative Law in Sri Lanka (4th Edition, Volume iii)** Dr. Sunil F. A. Coorey has succinctly dealt with the circumstances in which the writs of certiorari and prohibition would be available (at Pages 911 and 912)

"The circumstances in which *certiorari* and prohibition will be available have been summed up by Lord Justice Atkin, an English Judge, in the following famous words which on numerous occasions have been cited and followed by our courts.⁸

"whenever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs"

⁷ (1978-79)2 Sri L.R Page 412

⁸ Per Atkin L.J., R. V Electricity Commissioners (1924) 1 KB 171,205, cited in Sri Lanka at 42 NLR 197,205-206

This dictum has been analyzed as follows, as laying down four conditions which must be satisfied for *certiorari* or prohibition to issue:-⁹

“whenever anybody of persons, (firstly) having legal authority, (secondly) to determine questions affecting the rights of subjects, (thirdly) having the duty to act judicially, (fourthly) act in excess of their legal authority, they are subject to the controlling jurisdiction exercised by these writs”

In the instant case the Petitioner has failed to establish grounds required for the issuance of writ of prohibition. The STF officers were conducting an investigation pursuant to the receipt of information. A distinction will have to be drawn between routine regular searches and those which are conducted as a step in the investigative process of the police (STF or otherwise). Prisons are not immune from the Criminal Justice System of the Country and as such it cannot be contended that no investigative steps could be taken within the precincts.

In the aforesaid circumstances, I am of the view that the Petitioner has failed to establish a *prima facie* case for the issuance of notices on the Respondents.

Application Dismissed.

PRESIDENT OF THE COURT OF APPEAL

K. P. Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL

⁹ Soertsz J., Dankoluwa Estates Co., Ltd., vs. The Tea Controller (1941) 42 NLR 197,206