

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

Winlanka Hospitals (Pvt) Ltd.,
No. 129, S. De S. Jayasinghe Mawatha,
Nugegoda.

PETITIONER

C.A. Case No. WRT/0504/25

Vs.

1. Private Health Services Regulatory Council,
No. 2A, CBM House,
4th Floor, Lake Drive,
Colombo 08.
2. The Secretary,
Private Health Services Regulatory Council,
No. 2A, CBM House,
4th Floor, Lake Drive,
Colombo 08.
3. Chairman,
Private Health Services Regulatory Council,
No. 2A, CBM House,
4th Floor, Lake Drive,
Colombo 08.

4. The Secretary to the Ministry of Health and
Mass Media,
The Ministry of Health and Mass Media,
“Suwasiripaya”,
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.
5. H.M.P.D. Jayasekara,
(Investigating Officer of the Flying Squad of
the Ministry of Health),
“Suwasiripaya”,
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.
6. Senior Assistant Secretary (Flying Squad),
The Ministry of Health and Mass Media,
“Suwasiripaya”,
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.
7. Provincial Director of Health Services for the
Western Province,
Maligawatta Secretariat Building,
P.O. Box 876,
Colombo 10.
8. Sri Lanka Medical Council,
No. 31, Norris Canal Road,
Colombo 10.

9. Chairman,
Sri Lanka Medical Council,
No. 31, Norris Canal Road,
Colombo 10.

10. Karannagodage Ashoka Perera,
No. 316/D, Bopeththa,
Gothatuwa.

11. Dr. N. Kumaranayake,
Clinical Psychiatrist,
No. 129, S. De S. Jayasinghe Mawatha,
Nugegoda.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J.

COUNSEL : Shantha Jayawardena with N. Arulpragasam for the Petitioner.

Vikum De Abrew, ASG, P.C., with Sachintha Fernando, SC for
the 4th – 9th Respondents.

Rushdhie Habeeb with Amrah Minzar instructed by Waseem
Amhar for the 10th Respondent.

Saliya Pieris, P.C., with Sarinda Jayawardena for the 11th
Respondent.

SUPPORTED ON : 12.09.2025

DECIDED ON : 16.09.2025

ORDER**K.M.G.H. KULATUNGA, J.**

1. The petitioner is a company registered under the Companies Act No. 07 of 2007 and is engaged in the business of running a private hospital which is also registered under the Private Medical Institutions (Registration) Act No. 21 of 2006. The petitioner, by this application, is primarily seeking to quash a report of a Committee of Experts and also the Preliminary Investigation Report, upon which the said Committee of Experts based their report. They are in respect of the death of a patient at the petitioner hospital. These reports were not annexed to the petition; however, the respondents, by way of a motion dated 06.08.2025, annexed and made available the Preliminary Investigation Report, dated 27.06.2023, as document 'A', the Expert Committee Report, dated 28.02.2024, as document 'B', and the Expert Committee Summary Report, dated 22.05.2024, as document 'C'. The petitioner sought the production of these documents by prayer (b), and these documents were thus made available when the matter was taken up for support, and both parties made submissions *inter alia* on the said documents.
2. This matter was taken up for support on 12.09.2025, on which day Additional Solicitor General Mr. Vikum de Abrew, P.C., appeared for the 4th, 8th and 9th respondents, and Mr. Shantha Jayawardene, Senior Counsel, appeared on behalf of the petitioner. There was also representation on behalf of the 10th and 11th respondents. Upon hearing all the parties, it is now to decide on the granting of leave, and accordingly this order is made.
3. The critical substantive relief sought is to quash the Expert Committee Report and the Preliminary Investigation Report (documents A and B). The petitioner's main grounds of assailing the said reports are that:
 - i. the 1st respondent has no jurisdiction to decide on the issue of negligence and it is for a civil court to decide on this issue;

- ii. authorizing the inquiring officer acting under the provision of the Establishments Code is *ultra vires*;
- iii. the Expert Committee and the inquiring officer had not given an opportunity or heard the petitioner, thus acted in violation of the rules of natural justice; and
- iv. that these reports will cause prejudice to the petitioner.

4. As opposed to this, the learned Additional Solicitor General for the respondents took up the objections that this application is misconceived, premature and is against a mere fact-finding process; thus, the writ shall not lie. Prior to considering the said legal issues, it is necessary to summarise the facts. The patient who died was the 30-year-old son of the 10th respondent. He was admitted on 13.05.2021 to the petitioner hospital for heroin de-addiction treatment. The patient, Pasindu, had been receiving treatment until 20.05.2021. According to the bed head ticket and the evidence, it appears that the said patient has been afflicted by some form of infection. The petitioner hospital attempted to discharge the patient on 20.05.2025, at which point the patient collapsed and was rushed to the Colombo South General Hospital at Kalubowila, where he was pronounced dead. According to the Post-Mortem Report, the cause of death is sepsis with multi-organ failure and pneumonitis, which confirms a death due to a serious infection affecting all major organs as stated in the said post-mortem report.

5. Upon the said death, the 10th respondent, the mother of the deceased, had complained to the 1st respondent and also had complained to the Sri Lanka Medical Council, the 8th respondent. The 1st respondent council had referred this to the 4th respondent, Secretary, Ministry of Health and Mass Media. The 4th respondent has then caused a preliminary fact-finding inquiry to be conducted by the 5th respondent, Investigating Officer of the Ministry. The said authorisation to the 5th respondent has been given under the provisions of paragraph 13 of

Chapter XLVIII of the Establishments Code, directing a Preliminary Investigation to be conducted and a report to be tendered. Acting on this authorisation, the 5th respondent has conducted a preliminary fact-finding inquiry and recorded several statements from doctors and nurses attached to the petitioner hospital. The 5th respondent has also obtained a copy of the bed head ticket and the admission form from the petitioner hospital.

6. Upon ascertaining the material, the 5th respondent has submitted the Preliminary Investigation Report to the 4th respondent who had caused the same to be considered by a three-member Expert Committee. The said Committee of Experts has considered the report and the material collected at the Preliminary Investigation and submitted a report to the 4th respondent, the Secretary of the Ministry of Health, which is document 'A', along with a summary report document 'B'. There are certain observations made on the said finding of facts, and the conclusion is that this death may be referable to the negligence of the doctors and the staff of the hospital. Accordingly, it has been recommended that legal action be taken against the doctors, nursing staff and also the management of the said hospital. The recommendations of the Committee of Experts are:
 - i. to inform the Sri Lanka Medical Council;
 - ii. to ascertain if the hospital has obtained the approval of the Private Health Services Regulatory Council;
 - iii. to ascertain the qualification and the training of the doctors and the staff and to ascertain the availability of this CPR facility; and
 - iv. it is suggested that disciplinary action may be imposed on those who are responsible.
7. The petitioner is primarily seeking to quash the report of the Committee of Experts and the Preliminary Investigation Report. It appears that the complaint received by the 1st respondent had been forwarded to the 4th

respondent. The 4th respondent had taken steps to ascertain the basic facts of this complaint and in that process had obtained the services of the 5th respondent and a Committee of Experts consisting of three medical experts. This process is strictly not based on any statutory provision or requirement, but it appears that the 4th respondent, to ascertain the veracity, has caused a preliminary fact-finding inquiry to be made with the assistants of a Committee of Experts. It is admitted that in the course of the Preliminary Investigation, the 5th respondent did visit the petitioner hospital, record statements, and obtain documents from the petitioner hospital. It is also admitted that the petitioner had cooperated and assisted the said Preliminary Investigation by providing a copy of the bed head ticket and the documents. The petitioner has thus been aware and, to that extent, cooperated and participated in the said investigation. Having so participated and acquiesced, the petitioner cannot now be heard to complain that he was not afforded an opportunity.

8. The 5th respondent by the Preliminary Investigation Report 'C', has recommended that since a patient has died, it is appropriate to have the opinion of a suitable Committee of Experts. It appears that in view of the said recommendation, the 4th respondent has obtained the views from a Committee of Experts on the material elicited by the 5th respondent.
9. As I see, this Preliminary Investigation and the consideration by the Committee of Experts, if at all, was an exercise merely to assist the 4th respondent to determine the veracity of the complaint and decide if this complaint should be referred to the relevant bodies or authorities. Upon receiving the said report, the 4th respondent has referred the same to the Sri Lanka Medical Council, the 8th respondent and also to the Private Health Services Regulatory Council, the 4th respondent. Therefore, no action has been taken against the petitioner by the 1st respondent, except for referring the matter. To that extent, this Committee of Experts report and the Preliminary Investigation Report are no more than mere

fact-finding processes. It is the 3rd respondent Sri Lanka Medical Council and the 1st respondent Private Health Services Regulatory Council that now may decide upon conducting necessary inquiries and law investigations of their own. Nothing turns on these two reports except enabling the 4th respondent to decide on the veracity of this complaint and refer it to the relevant agencies. To that extent, this application is premature.

10. Neither the Preliminary Investigation conducted by the 5th respondent nor the views expressed by the Committee of Experts, have decided or determined any matter affecting the rights of the petitioner. Neither is the said Committee nor the inquiring officer vested with any legal authority to determine a question affecting the rights of the petitioner. In a similar vein, the 4th respondent, Secretary of the Ministry in merely forwarding this complaint, is also not vested with any legal authority to determine a question affecting the rights of the petitioner either. As stated above, it is no more than a mere collection of material and forwarding of the complaint to the relevant authority; thus, *certiorari* does not lie. In **Jayawardena vs. Silva** (72 NLR 25), the Court held that,

“Certiorari does not lie against a person unless he has legal authority to determine a question affecting the rights of subjects and, at the same time, has the duty to act judicially when he determines such question.”

11. When one considers the two reports, there is no final conclusion or finding against the petitioner in that sense. It is only an expression of an opinion and a collection of material and a mere view expressed that the same be referred to the relevant authorities. The Expert Committee Report may be in the form of a recommendation; however, the said recommendation is nothing more than an expression of an opinion to assist the 4th respondent to decide on the action he was to take. To that extent, there is no order made to be quashed in the legal sense. In **Ceylon Mineral Waters Ltd. vs. The District Judge of Anuradhapura** (70 NLR 312),

Abeyesundere, J., held that if at the time *certiorari* is applied for there is no order to be quashed, that remedy will be refused for that reason alone. This decision was cited with approval in **U. A. Nissanka vs. Chulananda Perera, Director General of Customs, and others** (CA Writ Application No. 377/2016, CAM 15.07.2022).

12. As observed above, the impugned reports and the referrals to the 1st and 8th respondents are no more than mere preliminaries and is neither decisive of any actual statutory power nor a decision made. In this regard, the following passage in Wade & Forsyth on Administrative Law, 9th Edition, at page 517 and the dicta appearing at page 518 is directly relevant:

“As the law has developed, quashing and prohibiting orders have become general remedies which may be granted in respect of any decisive exercise of discretion by an authority having public functions, whether individual or collective... They will lie where there is some preliminary decision, as opposed to a mere recommendation, which is a prescribed step in a statutory process which leads to a decision affecting rights, even though the preliminary decision does not immediately affect rights itself.” (at page 517)

*“If confusion and complication are to be avoided judicial review must be accurately focused upon the actual existence of power and not upon the mere preliminaries. The House of Lords perhaps appreciated this point in [citing **R vs. Secretary of State for Employment ex p. Equal Opportunities Commission** [1995] 1 AC 1] ... a case of prematurity, where the issue was not ripe for review”* (at page 518).

13. That being so, it is relevant that this complaint has also been separately made to the Sri Lanka Medical Council, independent to the reference made by the 4th respondent. The matter is also now pending in a civil

court. In these circumstances, I hold that the petitioner has failed to satisfy this court of a legal basis that entitles the petitioner to the relief as prayed for.

14. Accordingly, for the aforesaid reasons, I hold that this application is premature and futile, and being a mere fact-finding exercise, is not amenable to the writ jurisdiction of this Court. Thus, I see no basis in law or otherwise to issue notice as prayed for.

15. Accordingly, issuing of notice is refused. The application is thus dismissed. However, I make no order as costs.

JUDGE OF THE COURT OF APPEAL