

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

C.A. (Writ) Application

No: 0579/2024

S.N. Group (Private) Limited,
No. 271/5, Kerawalapitiya Road,
Handala, Wattala.

PETITIONER

Vs.

1. B.K. Prabath Chandrasiri,
Commissioner General of Labour,
Department of Labour,
Colombo 05.
2. Y.A.M.M. Yapa,
Deputy Commissioner of Labour,
Legal Enforcement Branch,
Department of Labour,
Mehewara Piyasa Building,
Colombo 05.

3. Dev. Andrew De Silva,
“Chandra”,
Dandeniya,
Eheliyagoda.
4. Florida Cross Maritime (Pvt) Ltd,
No. 96/2/12, Consistory Building,
Front Street,
Colombo 11.
(Local Agent of Seltic Shipping Taylor)

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Athula Bandara Herath with Ama Karunaratna, Chathusala Jayasinghe and
Umesh Rajapaksa instructed by Prasad Sirimanne for the Petitioner.
Pulina Jayasuriya, S.C. for the 01st and 02nd Respondents.

Argued on : 02.12.2025

Written Submission

Tendered on : 29.01.2026 by the Petitioner

Decided on : 04.03.2026

Adithya Patabendige, J.

The Petitioner, S.N. Group (Private) Limited, is an incorporated company in Sri Lanka and is described in the Petition as the charter party of the vessel, namely, *MV. Ocean Glory – 01*, owned by Celtic Shipping Services. The authorized agent of the said vessel is Florida Cross Maritime (Pvt) Ltd., the 4th Respondent.

The 3rd Respondent was appointed as the Chief Officer (a crew member) of the said vessel, with effect from 25th January 2014, by the letter of appointment dated 5th November 2013, marked **A3**.

FACTUAL BACKGROUND

The 3rd Respondent lodged a complaint, marked **A4** and dated 9th November 2015, with the 2nd Respondent, the Assistant Commissioner of Labour, Wattala, alleging non-payment of wages by the Petitioner.

Document marked **A-5 (a)** demonstrates that the Labour Department initiated inquiry proceedings pursuant to the complaint. **A-5 (a)** further reflects that the Petitioner sought a postponement on 20th April 2016, because the Head of the Department had gone abroad.

The Petitioner responded by stating that correspondence should be addressed to the 4th Respondent, Florida Cross Maritime (Pvt) Ltd, and not to the Petitioner, as reflected in the letter marked **A-5 (C)** dated 01st November 2016.

Thereafter, the 2nd Respondent issued certificates **A6**, **A7**, and **A8** under Section 46(3), directing the Petitioner to pay the amounts specified therein.

Subsequently, the 2nd Respondent instituted recovery proceedings before the Magistrate's Court of Wattala. However, the learned Magistrate decided that the Court lacked jurisdiction and dismissed the case on 25th October 2019.

Being aggrieved by the said decision, the matter was taken before the High Court in revision by the 2nd Respondent. The learned High Court Judge of the Western Province, holden at Gampaha, by Order dated 13th March 2024, set aside the aforementioned Order of the learned Magistrate and directed the learned Magistrate to proceed with the inquiry and make an appropriate Order marked **A13 (a)**.

Thereafter, the Petitioner has filed the instant writ application before this Court, seeking, inter alia,

- a mandate in the nature of a writ of certiorari to quash the certificates marked A6, A7, and A8, issued under Section 46(3) of the Wages Board Ordinance by the 2nd Respondent;
- a mandate in the nature of a writ of prohibition preventing the 1st and 2nd Respondents from executing the certificate marked A8;
- a mandate in the nature of a writ of mandamus compelling the 1st and 2nd Respondents to conduct a proper inquiry to determine the employer of the 3rd Respondent;
- and to grant other incidental reliefs.

Upon filing this application, notices were issued to the Respondents. Despite several attempts to serve the 4th Respondent, service was unsuccessful. The other Respondents, though duly served with notice, have not filed their statements of objections before this Court. In those circumstances, this Court proceeds to consider the application on the material placed before the Court, together with the submissions of the learned Counsel for the Petitioner and the learned State Counsel who appeared for the 1st and 2nd Respondents.

ISSUES FOR DETERMINATION

Upon considering the above factual matrix, the following issues arise for consideration in this writ application;

- Whether the 2nd Respondent acted without jurisdiction in issuing certificates **A6, A7** and **A8**:
- Whether the impugned certificates were issued in violation of natural justice:
- Whether the Petitioner is entitled to relief by way of a *writ of certiorari, prohibition, or mandamus*:
- Whether delay disentitles the Petitioner to discretionary relief.

MARITIME LAW AND THE NATURE OF CHARTER

The Petitioner describes itself as the “charter party” of the vessel, namely, *MV. Ocean Glory – 01*. The legal consequences of that status depend upon the nature of the charter. Maritime law recognizes three principal types of charter:

- **Voyage Charter**

Under a voyage charter, the vessel is engaged for a specific voyage. The owner retains possession and navigational control. The master and crew remain employees of the owner. The charterer acquires only the right to use the vessel’s cargo capacity. In such circumstances, employer responsibility remains with the owner.

- **Time Charter**

Under a time charter, the vessel is hired for a specified period. The owner retains possession and management. The crew remains the owner's servants. The charterer directs commercial employment but does not assume responsibility for manning. Again, employer liability ordinarily remains with the owner.

- **Bareboat (Demise) Charter**

Under this, possession and operational control pass to the charterer. The charterer assumes possession and operational control of the vessel. In such circumstances, the charterer becomes responsible for the employment and wages of the crew.

In *British India Steam Navigation Co., Ltd. v. Shanmughavilas Cashew Industries and Others (1990) SCC (3) 481*, the Supreme Court of India, referring to **Halsbury’s Laws of England**, explained the distinction between the charterparties that operate as a demise and those that do not. The above judgment refers to the paragraphs 401,402,403 and 404 of **Halsbury’s Laws of England, 4th edn. Vol. 43**, and state as follows;

“A contract for the carriage of goods in a ship is called in law a contract of affreightment. In practice these contracts are usually written and most frequently are expressed in one or other of two types of document called respectively a charterparty and a bill of lading.” In para 402 we read that a contract by charterparty is a contract by which an entire ship or some principal part of her is let to a merchant, called “the charterer”, for the

conveyance of goods on a determined voyage to one or more places, or until the expiration of a specified period. In the first case it is called a "voyage charterparty", and in the second a "time charterparty". Such a contract may operate as a demise of the ship herself, to which the services of the master and the crew may or may not be added, or it may confer on the charterer nothing more than the right to have his goods conveyed by a particular ship, and, as subsidiary to it, to have the use of the ship and the services of the master and crew.

Thus, for the purposes of ascertaining the responsibility of a charterer in respect of the cargo shipped and landed, it would be necessary to know not only the stipulations between the shipper i.e. the owner of the cargo, and the charterer, evidenced by the bill of lading, and also those between the charterer and the owner of the ship. If the charter is by way of demise, the problem would be simple inasmuch as the bill of lading will be purely between the shipper and the charterer. In cases of a 'voyage charter' or a 'time charter' one has to find out the actual terms of the charter to ascertain whether they operated as charter by demise or made the charterer only as an agent of the shipowner and if so to what extent so as to ascertain the extent of privity established between the shipper, and the shipowner as stipulated in the bill of lading. Charterparties by way of demise, says Halsbury, at para 403, are of two kinds: "(1) charter without master or crew, or "bareboat charter", where the hull is the subject matter of the charterparty, and (2) charter with master and crew, under which the ship passes to the charterer in a state fit for the purposes of mercantile adventure. In both cases the charterer becomes for the time being the owner of the ship; the master and crew are, or become to all intents and purposes, his employees, and through them the possession of the ship is in him. The owner, on the other hand, has divested himself of all control either over the ship or over the master and crew, his sole right being to receive the stipulated hire and to take back the ship when the charterparty comes to an end. During the currency of the charterparty, therefore, the owner is under no liability to third persons whose goods may have been conveyed upon the demised ship or who may have done work or supplied stores for her, and those persons must look only to the charterer who has taken his place."

In para 404, Halsbury said:

"Although a charterparty which does not operate as a demise confers on the charterer the temporary right to have his goods loaded and conveyed in the ship, the ownership remains in the original owner, and through the master and crew, who continue to be his employees, the possession of the ship also remains in him. Therefore, the existence of the charterparty does

not necessarily divest the owner of liability to third persons whose goods may have been conveyed on the ship, nor does it deprive him of his rights as owner.”

CREW AGREEMENT

The Crew Agreement relating to the vessel, *MV. Ocean Glory – 01* was signed by the 4th Respondent on 25th November 2013, marked **A9**. According to the **A9**, the owner of the vessel, *MV. Ocean Glory – 01* is Celtic Shipping Services, and the local Authorized Agent is the 4th Respondent.

CLAUSE 2 OF THE CREW AGREEMENT

Clause 2 of the Crew Agreement **A9** provides that “Owner, Charterer, Operator, and Authorized Agent” shall employ the officer and seaman, and pay wages. This statutory formulation is significant. It does not restrict responsibility to “Owner” alone. It expressly includes “Charterer”. Therefore, under Clause 2, the charterer is also recognized as an employer.

EFFECT OF CLAUSE 6 OF THE CREW AGREEMENT

Clause 6 provides that any other contract signed between Shipowner, Master, Charterer, Operator, Authorized Agent, and the officers, seamen, which is in any way derogatory to the terms and conditions stipulated in the Agreement, marked **A9**, shall be null and void.

Clause 6 affirms the primacy of the statutory Crew Agreement. It prevents parties from contracting out of statutory wage obligations.

Importantly, Clause 6 does not immunize a charterer from liability. Instead, it ensures that if a charterer falls within the employment category contemplated in Clause 2, private arrangements cannot defeat the seafarer’s statutory protections.

APPLICATION TO THE PRESENT CASE

Paragraph 1 of the Petition merely asserts that the Petitioner was the “charter party” of the vessel *MV. Ocean Glory – 01*. In maritime law, the expression “charterparty” denotes the contract by which a vessel is let, whereas the party to such a contract is properly described as the “charterer.” The use of the term “charterparty” in the Petition appears to refer to the Petitioner’s status as charterer of the vessel.

It does not plead that the charter was purely a voyage charter nor that possession and control of the vessel were retained exclusively by Celtic Shipping.

It is also to be noted that paragraph 1 of the Crew Agreement (**A9**) identifies Celtic Shipping as “Owner, Charterer, Operator.” This supports the Petitioner’s contention that Celtic Shipping and its local agent, Florida Cross Maritime (Pvt) Ltd., the 4th Respondent, bore primary responsibility under the agreement. However, the mere identification of Celtic Shipping in the Crew Agreement does not conclusively resolve the issue in these proceedings. The statutory formulation in Clause 2 contemplates liability attaching to the “Owner, Charterer, Operator, or Authorized Agent,” depending on the factual matrix.

It is further observed that document **A11** identifies an entity described as the “Operator” of the vessel, namely **S.N. Fishing**. The address attributed to that entity corresponds to the address of the Petitioner as set out in the Petition. While this Court, in the exercise of its writ jurisdiction, does not determine whether the Petitioner and **S.N. Fishing** are legally identical or whether corporate personality should be disregarded, the existence of such material constituted a factual circumstance that the 2nd Respondent could consider in examining whether the Petitioner fell within the statutory category of “Charterer” or “Operator” contemplated in Clause 2 of the Crew Agreement.

Clause 2 of the Crew Agreement expressly includes “Charterer”. The Petition does not conclusively establish the type of charter. In those circumstances, it cannot be contended that the 2nd Respondent acted in excess of jurisdiction or in patent disregard of the statutory framework, in examining whether the Petitioner fell within the statutory category of “Charterer” or “Operator.”

The classification of a charter voyage, time, or demise involves factual determinations and the evaluation of evidence.

Such disputed factual issues are not ordinarily amenable to resolution within the writ jurisdiction of this Court.

In the instant writ application, the burden lies upon the Petitioner to demonstrate that the 2nd Respondent acted without jurisdiction.

It therefore cannot be contended that the 2nd Respondent acted without any evidentiary foundation.

PARAGRAPH 9 OF THE PETITION

Paragraph 9 asserts that the 2nd Respondent “arbitrarily decided” that the Petitioner was the employer “without an investigation and/or inquiry.”

However, paragraphs 6 and 7 of the Petition admit that the Petitioner was informed of the complaint. The Petitioner was summoned before the Labour Office, which responded in writing and requested a postponement. Thereafter, as noted earlier in this judgment, the Petitioner informed the 2nd Respondent that correspondence should be addressed to the 4th Respondent, Florida Cross Maritime (Pvt) Ltd, and not to the Petitioner.

The documents **A4**, **A-5(a)**, and **A-5(c)** demonstrate that proceedings were initiated and that the Petitioner was afforded an opportunity to respond.

Accordingly, the Petitioner cannot now be heard to contend that the 1st and 2nd Respondents issued the impugned documents without affording an opportunity to be heard. An adverse determination, without more, does not establish the absence of inquiry.

JURISDICTION OF THE 2nd RESPONDENT

Section 46(3) of the Wages Board Ordinance empowers the Commissioner to issue a certificate for the recovery of wages found due.

Clause 2 of the Crew agreement includes the term “Charterer”. Maritime law recognizes that charterer liability may arise depending upon the nature of the charter. The Petition does not establish that the charter was purely a voyage or a time charter. The factual classification of the charter requires evidentiary evaluation. In those circumstances, it cannot be contended that the 2nd Respondent acted in excess of jurisdiction or in patent disregard of the statutory framework.

On the other hand, whether the Petitioner was in fact liable is a mixed question of fact and law. Such issues are not ordinarily amenable to the writ jurisdiction of this Court.

WRIT OF MANDAMUS

In the absence of any finding that the 2nd Respondent acted without jurisdiction or in violation of the law, the issuance of a *writ of mandamus* does not arise.

DELAY AND DISCRETION

The impugned certificates were issued in 2017 and 2018. The present application was filed in 2024.

The pendency of recovery proceedings instituted by the 2nd Respondent does not suspend the requirement of prompt invocation of the writ jurisdiction of this Court by the Petitioner, particularly where the impugned certificates themselves were known to the Petitioner since 2017 and 2018.

The Petitioner has failed to provide a satisfactory explanation for the undue delay.

The grant of relief in the writ jurisdiction is discretionary, and this delay further discourages this Court from exercising its discretion.

CONCLUSION

The Petitioner has failed to establish a lack of jurisdiction, a violation of natural justice, an error of law apparent on the face of the record, irrationality, illegality, or a failure of a statutory duty of the 2nd Respondent.

The dispute concerns contested factual issues regarding the employer's status under a maritime framework. Such matters are not amenable to determination within the limited supervisory jurisdiction exercised under Article 140 of the Constitution.

For the foregoing reasons, the application of the Petitioner is dismissed.

I make no Order as to costs.

JUDGE OF THE COURT OF APPEAL

Dharmika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL