

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

Court of Appeal Writ
Application No:

CA/WRT/189/2025

Lanka Spa and Wellness Association,
No.18A/4,
Kirigampamunuwa,
Polgasowita.

And 02 Others.

PETITIONERS

vs

Dr. Nalinda Jayathissa MP,
Hon. Minister of Health,
Ministry of Health,
“Suwasiripaya”,
No.385,
Ven Baddegama Wimalawansa Thero Mawatha,
Colombo 10.

And 05 others

RESPONDENTS

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

Hon. Justice K. P. Fernando

Counsel: Chrishmal Warnasuriya instructed by S.A.D. Ginigaddara for the
Petitioners

Manohara Jayasinghe DSG for the Respondents.

Supported On: 01.09.2025

Decided On: 21.01.2026

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

The Petitioners in the instant matter have filed this application seeking *inter alia* the following reliefs,

- I. Writ of *Mandamus* directing the 1st and 2nd Respondents to formulate regulations and guidelines pertaining to the Spa industry.
- II. Directing the 5th Respondent to immediately supervise and issue directions to the Police to ensure that officers of the Police Department act strictly in accordance with the said regulations and guidelines when taking action against the membership of the 1st Petitioner association.

The 1st Petitioner is an organization incorporated under Section 32 of the Companies Act No 07 of 2007 whose primary function is to safeguard the interest of persons engaged in the Spa and Wellness industry. The 2nd and 3rd Petitioners are its incumbent President and Secretary respectively.

The primary grievance of the Petitioners is that in certain instances when officers of the 5th Respondent took legal measures against the membership of the 1st Petitioner and their employees, they were subjected to harassment and faced with the indignity of having to appear in court proceedings.

According to the Petitioners, one of the reasons which have lead to this situation is that there is absence of proper regulatory mechanism and oversight due to the necessary regulations not being formulated. It was submitted by the Petitioners that wide variety of services are generally offered by Spa Facilities which typically include massages, facials, body treatments, salon services, water-based treatments etc. The Petitioners have alleged that some of the Spa establishments have been subjected to repeated raids which have even led to arrests and prosecutions.

In certain instances the aforesaid actions have even culminated in prosecutions under the provisions of the brothels ordinance no. 05 of 1889 (as amended). The Petitioners have further contended that such actions cause severe detriment and even litigation which entail considerable expenses and lead to the closure of the establishments concerned. In order to remedy this situation, the Petitioners contend that the required regulations and guidelines should be formulated which are capable of clearly defining the nature and scope of the legitimate services which may be offered by the Spa and wellness industry.

In response to the contentions advanced by the Petitioners, the Respondents submitted that in fact some of these facilities are perceived as a “vener for brothels” where the employees who provide the aforementioned services are engaging in prostitution.

The Respondents have strenuously contended that the instant application revolves around one single issue; as to whether there exists a statutory duty cast on any of the Respondents requiring such Respondents to formulate and publish regulations and guidelines with regard to the Spa and wellness industry which would be amenable to the writ jurisdiction of this Court i.e. which duty maybe enforced by the issuance of the writ of *mandamus*.

Further elaborating on this issue, it is the contention of the Respondents that if no such legal duty exists, “the law casts no obligation to publish regulations.” The Respondents contend that though desirable and beneficial, none of the Respondents are bound by law to formulate such regulations as per the legal provisions currently in force. The necessary corollary to this line of argument is that this Court cannot issue a writ of *mandamus* directing the Respondents to do what they are not bound by law to do.

The Respondents have placed heavy reliance on the following two decisions of the Supreme Court.

1. In the case of **Credit & Information Bureau of Sri Lanka Vs. Messiers Jafferjee and Jafferjee (Pvt) Ltd (2005) 1 SLR 89**, as per the submissions of the Respondents, the Court captures the law on *mandamus* clearly and accurately and any decision by this Court on whether notices should be issued must be in line with the very narrow formulation in that case.
2. In **Kaluarachchi Vs. Ceylon Petroleum Corporation and Others [SC Appeal No. 43/2013; SC Minutes of 19th June 2019]**, it was observed that, “the foundation of *mandamus* is the existence of a legal right. A

court should not grant a Writ of *Mandamus* to enforce a right which is not legal and not based upon a public duty."

The Credit & Information Bureau case was decided by J.A.N. De Silva J with Sarath N. Silva CJ and Weerasuriya J concurring. The Supreme Court analyzed the conditions precedent to the issuance of *mandamus* which are reproduced below,

- a) *The Applicant must have a legal right to the performance of a legal duty by the parties against whom the Mandamus is sought (R v Barnstaple Justices)¹ The foundation of Mandamus is the existence of a legal right (Napier Ex Parte)²*
- b) *The right to be enforced must be a "Public Right" and the duty sought to be enforced must be of a public nature.*
- c) *The legal right to compel must reside in the Applicant himself (R v Lewisham Union)³*
- d) *The application must be made in good faith and not for an indirect purpose.*
- e) *The application must be preceded by a distinct demand for the performance of the duty.*
- f) *The person or body to whom the writ is directed must be subject to the jurisdiction of the court issuing the writ.*
- g) *The Court will as a general rule and in the exercise of its discretion refuse writ of Mandamus when there is another special remedy available which is not less convenient, beneficial and effective.*
- h) *The conduct of the Applicant may disentitle him to the remedy.*
- i) *It would not be issued if the writ would be futile in its result.*
- j) *Writ will not be issued where the Respondent has no power to perform the act sought to be mandated.*

Furthermore, in the said judgment referring to the aforementioned prerequisites, the Supreme Court held thus,

*"The above principles governing the issue of a writ of Mandamus were also discussed at length in **P. K. B Benarji Vs H. J. Simonds AIR (1947) Cal 347.** Whether the facts show the existence of any or all pre-requisites to the granting of the writ is a question of law in each case to be decided not in any rigid or technical view of the question, but according to a sound and reasonable*

¹ R. V. Barnstaple Justices (1937) 54 TLR 36

² Napier ex parte 1852 18 QB, 692 at 695

³ R. V. Lewisham Union (1897) 1 QB 498

interpretation. The court will not grant a Mandamus to enforce a right not of a legal but of a purely equitable nature however extreme the inconvenience to which the applicant might be put.”

Essentially, 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**.

In **J. W. De Alwis vs. V. C. de Silva**,⁴ the Court upon consideration of the facts of that case was not inclined to issue a writ of *mandamus* because no statutory duty of a public nature was owed by the Respondent to the Petitioner.

The same view was expressed by **Dr. Ranaraja J** in **Wickramasinghe vs. Ceylon Electricity Board and Another**,⁵ who held thus,

“The general rule of mandamus is 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”

In **Hewa Pesige Themiya Siri Jayasuriya vs National Savings Bank (CA/WRT/0189/20 decided on 12.09.2025)** Gihan Kulathunga J has cited with approval the judgment in **Nandisena De Zoysa vs. The University Grants Commission and Others [2004] 2 Sri L.R 86**, Wherein it was held that “*mandamus* can be issued only to compel an authority to perform its statutory duties and does not lie to compel performance of a moral obligation

I also wish to make reference to the case of **Ven. K. Wacheeswara Thero vs. Dharmasena Dissanayaka (CA/WRIT/45/2019)** decided on 30.03.2023 which cited with approval the following passage from **M. P. Jain and S. N. Jain in ‘Principles of Administrative Law’, 9th Edition (2022), LexisNexis, at p.2440.**

“Mandamus means a command; Mandamus is used to enforce the performance of public duties by public authorities; the essence of mandamus is that it is a command by the court ordering the performance of a public legal duty. Mandamus is a command issued by a court to an authority directing it to perform a public duty belonging to its office; Mandamus is issued to enforce performance of public duties by authorities of all kinds; Mandamus is available against any public authority including administrative and local bodies.”

⁴ (1967) 71 NLR 108

⁵ (1997) 2 SLR 377

As contended by the Respondents, the Petitioners have not cited any specific provision in any law which cast a legal/public/statutory duty which requires the Respondents to formulate rules and regulations pertaining to Spas and Wellness establishments. The word “Statutory” in common parlance would mean “relating to a statute; created or defined by a statute; required by a statute; conforming to a statute.” (*Vide* Black’s Law Dictionary 4th edition)

Similarly, “Statutory Obligation” would mean an obligation which is created by or arises out of a statute, as distinguished from one founded upon acts between parties or jural relationships.

Due to the aforesaid reasons, I hold that the Petitioner has failed to establish a *prima facie* case warranting the issuance of formal notices on the Respondents.

However, it is my view that it is timely that the relevant authorities pay due attention to the concerns of the Petitioners and consider formulating the required regulations in order to adequately and effectively regulate the activities of Spas and Wellness establishments. Such a course of action will have the effect of preventing and minimizing the inconvenience caused to such business enterprises due to its unregulated nature.

Application is dismissed.

PRESIDENT OF THE COURT OF APPEAL

K. P. Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL