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

In a matter of an application for Writs of *Certiorari* and *Mandamus*, under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.
CA/WRT/0056/2025

Samarakoon Mudiyanselage
Chaminda Prasad Samarakoon,
20A/1, Pilawala,
Gunnepana,
Kandy.

Petitioner

Vs.

1. **Ceylon Petroleum Corporation,**
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

2. **D. J. A. S. De S Rajakaruna**,
   Chairman,
   Ceylon Petroleum Corporation,
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

3. **Dr. Mayura Neththikumarage**,
   Managing Director,
   Ceylon Petroleum Corporation
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

4. **Honorable Attorney General**,
Attorney General's Department,
Colombo 12.

Respondents

Before	:	**D. THOTAWATTA, J.** **K. M. S. DISSANAYAKE, J.**
Counsel	:	Mohamed Adamaly, P.C. with Sindhu Ratnarajan instructed by Shanya Wickramarathna for the Petitioner. Rajika Aluwihare, S.C. for the 1st to 4th Respondents.
Argued on	:	19.01.2026
Written Submissions of the Petitioner tendered on	:	20.04.2026
Written Submissions of the 1st to 3rd Respondents tendered on	:	06.04.2026
Written Submissions of the 4th Respondent tendered on	:	Not tendered.
Decided on	:	05.06.2026

K. M. S. DISSANAYAKE, J.

This is an application by the Petitioner under Article 140 of the Constitution for a mandate in the nature of Writ of *Certiorari* to quash the decision of the 1st

and/or 2nd and/or 3rd Respondents to interdict the Petitioner with half pay, as contained in the letter marked **P19**, and/or to quash the letter itself in its entirety; and for a mandate in the nature of a Writ of *Mandamus* directing the 1st and/or 2nd and/or 3rd Respondents to reinstate the Petitioner in employment in the marketing function in the same grade and post, and/or to reinstate the payment to the Petitioner of his full monthly salary and emoluments until conclusion of the disciplinary process.

The Petitioner in the instant application seeks to challenge the interdiction of the Petitioner's employment with half pay effected through letter of interdiction dated 03.01.2025 (**P19**) on the basis that it was contrary to law and was conducted in a manner that is manifestly, and blatantly, unreasonable, *ultra-vires* and malicious for the reasons set out in the petition of the Petitioner. The position adverted to, by the Petitioner in his petition was that, the interdiction of the Petitioner's employment was effected with ulterior motives as a step in a series of acts of harassment that had been meted out to the Petitioner over considerable period of time. It was thus, submitted to Court by the Petitioner that in the light of the facts and the circumstances set out in his petition, the decision to interdict the Petitioner's employment with half pay as contained in '**P19**' is amenable to judicial review by this Court.

It is in this context, I would now, propose to briefly, deal with the facts and the circumstances that according to the Petitioner, had led him to have instituted the instant application in this Court for the mandates in the nature of Writs of *Certiorari* and *Mandamus* against the 1st, 2nd and 3rd Respondents.

The Petitioner being a citizen of Sri Lanka, had joined the Ceylon Petroleum Corporation-the 1st Respondent as a clerk-grade B/3 in or around 1995 and he had subsequently, been made permanent in that position on 06.03.1999 (**P1** and **P2**); and that he had then, been promoted from time to time in his employment and by letter dated 08.11.2010, he had been assigned with covering up duties in the post of Manager Marketing; and that he had finally, been promoted to the

post of Marketing Manager (Retail) by letter dated 17.05.2012 (**P3** and **P4**); and that on or about 2015, the Petitioner while serving in his position as Marketing Manager in the Ceylon Petroleum Corporation (hereinafter called and referred to as 'the CPC') had been transferred from the head office of the CPC to the Sapugaskanda New Terminal Under the Refinery function for unspecified duties with immediate effect pending disciplinary inquiry by letter dated 24.03.2015 (**P5**) on an aggregate of 6 baseless, unfounded, unsubstantial and misleading charges framed against him; and that he had subsequently, been interdicted on 18.08.2015(**P6**) without pay and 5 charge sheets dated 07.08.2015, 14.08.2015, 03.12.2015, 01.12.2015 and 26.05.2016 (**P7(a)** to **P7(e)**) had then, been issued against him aggregating 31 false and misconceived charges against him, which had been responded to by individual letters addressing the charges in each of the aforesaid charge sheets; and that notwithstanding comprehensive responses being provided by the Petitioner to the charges against him, the 1st Respondent had initiated 5 disciplinary inquiries against him, which had continued until the wrongful and unlawful termination of his employment on 29.12.2016 upon the purported findings of the inquiry related to the second and third charge sheets (**P7(b)** and **P7(c)**); and that, the Petitioner had challenged both his unlawful transfer and his unlawful interdiction through two separate fundamental rights applications in the Supreme Court, both of which were withdrawn by him consequent to the termination of his services (**P9(a)** and **P9(b)**); and that in response to the unlawful and wrongful termination of his employment, the Petitioner filed an application in the Labour Tribunal of Colombo praying *inter-alia* for reinstatement with full back wages and/or in the alternative, for compensation; and that the 1st Respondent had consequently, decided to settle the matter before the Labour Tribunal of Colombo and agreed to the demand of the Petitioner; and that pursuant to that settlement, the Petitioner had been reinstated with full back wages and without a break in service by the 1st Respondent with effect from 08.02.2021 (**P13**); and that consequently, the Petitioner had resumed responsibilities in the position of Marketing Manager (Retail) with effect from 08.02.2021 and thus, it became evident that, the

Petitioner had not been in active employment under the 1st Respondent in his position as Marketing Manager (Retail) from the time he was wrongfully transferred on 24.03.2015 through the period of his interdiction and termination and until his reinstatement on 08.02.2021; and that on 15.07.2024, the 1st Respondent had issued an internal investigation report on the charging of Monthly Utility Fees (hereinafter called and referred to as the 'MUF') for Corporation Own Dealer Outlets (hereinafter called and referred to as the 'CODOs') (**P15**); and that the Chairman-the 2nd Respondent had by virtue of the powers vested in him by such Disciplinary Rules as formulated by the 1st Respondent by virtue of powers vested in it by section 6 of the Ceylon Petroleum Corporation Act No.28 of 1961 (as amended), a copy of which was annexed to the petition of the Petitioner marked as **P14** (hereinafter called and referred to as the 'Disciplinary Rules'), appointed a committee comprising of Additional Secretary (Investigation) of the Ministry of Public Administration, Provincial Councils and Local Government, Dammika Muthugala, Director General of the Sri Lanka Tea Board, S. M. Anuruddha and the Investigation Officer of the Ministry of Public Administration, Provincial Councils and Local Government, L.L.N. Pushpakumara (hereinafter called and referred to as 'the Committee'), to investigate into certain matters relating to the alleged non-implementation of Board decisions relating to the charging of MUF and/or Monthly Rental from CODOs; and that the Committee had commenced its investigation and submitted an interim preliminary investigation report dated 11.09.2024 a copy of which was annexed to the petition of the Petitioner marked as '**P16**' (hereinafter called and referred to as 'the interim preliminary investigation report') recommending W.M.K.R.B. Wickramasinghe-Deputy General Manager (Marketing) and W.D.L.C. Abeygunawardena-Marketing Manager (Acting) to be interdicted with immediate effect and proceed with the preliminary investigation; and S.M.C.P. Samarakoon-Marketing Manager-the Petitioner to be transferred to a different location away from the marketing function and a charge sheet to be issued to him and the punishment to be meted out following a disciplinary inquiry; and that the 3rd Respondent purporting to act in terms of the Disciplinary Rules,

more particularly, Rule 9(a) had upon consideration of the recommendations of the interim preliminary investigation report (**P16**), transferred the Petitioner away from the marketing function by the letters dated 20.09.2024 and 24.09.2024 copies of which were annexed to the petition of the Petitioner marked as '**P17(a)** and **P17(b)**' ; and that the Petitioner had subsequently, been issued with a charge sheet dated 02.01.2025(**P18**) containing in the aggregate of 6 charges on the purported non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs); and that to his surprise, the Petitioner had also been served with a letter of interdiction dated 03.01.2025 (**P19**) pending disciplinary inquiry purporting to interdict him with half pay following the interim preliminary investigation report (**P16**); and that charges so framed against him in the said charge sheet (**P18**) are entirely, fallacious, misleading and misconceived and many of such charges relate to a period as far back as 10 years, namely 2013; and that, charges leveled against him in the charge sheet (**P18**), cannot thus, be raised against the Petitioner for the reasons set out in paragraph 27(a) and (b) of the petition of the Petitioner, namely that; a) they relate to a period during which the Petitioner had been transferred out of his functional area and/or was under interdiction and/or had been terminated from employment pursuant to baseless, vindictive, illegal actions against him; b) that in any event, the 1st Respondent had represented to the Labour Tribunal that all matters relating to the period up to 2018 had been taken up in the inquiry before the said Tribunal, and consequently, the 1st Respondent was estopped from now attempting to identify further matters relating to the said period.

It was under those facts and circumstances, the Petitioner had by way of substantive relief, sought in prayer 'c' and 'd' of his petition the followings;

a) for a mandate in the nature of a Writ of *Certiorari* quashing the decision of the 1st and/or 2nd and/or 3rd Respondents to interdict the Petitioner

with half pay, as contained in the letter marked **P19**, and/or to quash the letter itself in its entirety; and

b) for a mandate in the nature of a Writ of *Mandamus* directing the 1st and/or 2nd and/or 3rd Respondents to reinstate the Petitioner in employment in the marketing function in the same grade and post, and/or to reinstate the payment to the Petitioner of his full monthly salary and emoluments until conclusion of the disciplinary process.

Let me next, examine the principal ground and/or the pivotal basis upon which the substantive relief by way of mandates in the nature of writs of *Certiorari* and *Mandamus* as enumerated above, were sought by the Petitioner.

As can clearly, and manifestly, be deducible from the averments in the paragraphs 28, 29, 30, 31 and 32 of the petition of the Petitioner, the principal ground being the alleged act of the Managing Director of the CPC, namely; the 3rd Respondent, of subsequently interdicting the Petitioner with half pay after first transferring him and interdicting other two officers, namely; Deputy General Manager (Marketing) and Manager Marketing (Acting) (Vide-paragraph 23 of the petition) in accordance with the recommendation made by the Committee in its interim preliminary investigation report, which according to the Petitioner, is entirely contrary to the recommendations made by the 1st Respondent's own Committee in its interim preliminary investigation report (**P16**), which investigated into the matter and analyzed its circumstances and therefore, the decision by the 3rd Respondent to interdict the Petitioner with half pay (**P19**) was in blatant violation of, and *ultra vires* of Rule 9 of the Disciplinary Rules of the CPC for; according to the Petitioner, in any event, it is apparent that the said Rules do not vest powers in the Chairman and/or Managing Director to effect a transfer and interdiction of an officer specially when the Committee-the CPC itself appointed, in its interim preliminary investigation report, only

recommended the transfer of the said officer-the Petitioner pending a formal disciplinary inquiry and therefore, the action of the Chairman and/or Managing Director in interdicting the Petitioner with half pay in this instance is according to the Petitioner, unlawful, unreasonable, illegal, vindictive and steep in *mala fides* and had been conducted without any justification for the same demonstrating that, it had been conducted to victimize and embarrass the Petitioner *vis a vis* the staff of the 1st Respondent (Vide-paragraphs 29 to 32 of the petition of the Petitioner).

It may now, be examined.

It is common ground that the Disciplinary Rules (**P14**) which are referred to as the Disciplinary Rules Of The Ceylon Petroleum Corporation, had been framed by the CPC by virtue of the powers vested in it by section 6(o) of the Ceylon Petroleum Corporation Act No 28 of 1961 (as amended) (hereinafter called and referred to as 'the Act') for the disciplinary control of its permanent employees other than its temporary, casual or probationary employees (Vide-Rule 01 of the Disciplinary Rules).

Rule 9(a) of the Disciplinary Rules (**P14**) consists of two parts.

First part of the Rule 9(a) of the Disciplinary Rules (**P14**) provides for the interdiction by the Chairman or Managing Director of the CPC, of any officer thereof, and it enacts thus;

> "If any case **the Chairman** or **Managing Director** considers that **the interests of the corporation** require that any officer should cease forthwith to exercise the powers and/or functions of his office, he may interdict the officer pending disciplinary action against him. If an employee cannot appropriately be interdicted in terms of these Rules, but if it is in the interest of the investigation or inquiry that he should not exercise the duties or functions of his post, he should be transferred, or he should be placed on compulsory leave." [Emphasis is mine]

Second part of the Rule 9(a) of the Disciplinary Rules (**P14**) provides that;

> "Where there is a prima-facie case against an officer in respect of an offence in the first Schedule warranting disciplinary action, the disciplinary authority taking in to careful consideration, the nature of the offence, the period of service of the officer, his previous record of service, the difficulty in adopting a formal disciplinary procedure, the reasons which led the officer to commit such offence and its background, considers that the most appropriate action in the circumstances is the compulsory retirement of the officer, a complete report on the matter should be submitted to the Board of Directors, if it is the most suitable action for the officer whose previous record of service is long as well as meritorious and act in accordance with the decision of the Board of Directors."

The legal effect of the first part of Rule 9(a) of the Disciplinary Rules (**P14**) is to confer upon the Chairman or the Managing Director of the CPC the power and/or authority to interdict any officer of the CPC in any case coming within the ambit of the first part thereof, whereas, the legal effect of the second part is to confer upon the Board of Directors the power and/or authority to send any officer of the CPC on compulsory retirement in any case coming within the ambit of second part thereof.

A careful analysis of First part of the Rule 9(a) of the Disciplinary Rules (**P14**) manifestly, shows that, it envisages the situations as enumerated below;

i. If any case the Chairman or Managing Director considers that the interests of the corporation require that any officer should cease forthwith to exercise the powers and/or functions of his office, he may interdict the officer pending disciplinary action against him;
ii. If an employee cannot appropriately be interdicted in terms of these Rules, but if it is in the interest of the investigation or inquiry that he should not exercise the duties or functions of his post:-

a) he should be transferred, or

b) he should be placed on compulsory leave.

Hence, the question whether an officer of the CPC should be transferred or be placed on compulsory leave pending disciplinary action would arise only, in case where, if an employee cannot appropriately be interdicted in terms of these Rules, but if it is in the interest of the investigation or inquiry that he should not exercise the duties or functions of his post. Therefore, the resultant position being such that, where if an employee can appropriately, be interdicted in terms of the first part of Rule 9 of the Disciplinary Rules (**P14**), the question whether an officer of the CPC should be transferred or be placed on compulsory leave pending disciplinary action would not in any manner, arise.

Upon a careful analysis of first part of the Rule 9 of the Disciplinary Rules (**P14**) makes it manifest that if any case the Chairman or Managing Director of the CPC considers that the interests of the corporation require that any officer should cease forthwith to exercise the powers and/or functions of his office, he may interdict the officer pending disciplinary action against him.

Hence, it becomes manifest that first part of the Rule 9(a) of the Disciplinary Rules (**P14**) imposes upon the Chairman or the Managing Director of the CPC as the case may be, a condition precedent for the exercise of the power of interdiction of any officer of the CPC, so vested in them pending disciplinary action against any such officer that the Chairman or the Managing Director as the case may be, should in the first place, form an opinion that **the interests of the Corporation require** that **any officer should cease forthwith to exercise the powers and/or functions of his office**. [Emphasis is mine]

A provision somewhat similar to that of the first part of the Rule 9(a) of the Disciplinary Rules (**P14**) is contained in the second part of the Rule 9(a) of the Disciplinary Rules (**P14**) too, namely; if the disciplinary authority considers that the most appropriate action in the circumstances, is the compulsory retirement

of the officer of the CPC. In this instance too, it is a condition precedent for the exercise by the disciplinary authority, of the power of sending on compulsory retirement of any officer of the CPC, so vested in it in a situation stipulated therein, that it should form an opinion that **the most appropriate action in the circumstances, is the compulsory retirement of the Officer**. [Emphasis is mine]

Hence, it is no doubt that a great deal of discretion has been so vested in the Chairman or the Managing Director or the Disciplinary Authority of the CPC as the case may be, in the exercise of the power so vested in them under Rule 9(a) of the Disciplinary Rules (**P14**) as enumerated above and the Chairman or the Managing Director or the Disciplinary Authority of the CPC as the case may be, should in the exercise of the discretion so vested in them by Rule 9(a) of the Disciplinary Rules (**P14**), act in good faith, reasonably and not in excess of the powers so vested in them thereby.

As enumerated above, the Petitioner in the instant application seeks to challenge the interdiction of the Petitioner's employment with half pay effected through letter of interdiction dated 03.01.2025 (**P19**) on the basis that it was contrary to law and was conducted in a manner that is manifestly, and blatantly, unreasonable, *ultra-vires* and malicious for the reasons set out in the petition of the Petitioner. The position adverted to, by the Petitioner in his petition was that, the interdiction of the Petitioner's employment was effected with ulterior motives as a step in a series of acts of harassment that had been meted out to the Petitioner over considerable period of time. It was thus, submitted to Court by the Petitioner that in the light of the facts and the circumstances set out in his petition, the decision to interdict the Petitioner's employment with half pay as contained in '**P19**' is amenable to judicial review by this Court.

It was thus, contended by the learned President's Counsel for the Petitioner that, the decision to interdict the Petitioner (**P19**) was motivated by extraneous considerations without any legal basis whatsoever and therefore, the said

decision to interdict the Petitioner from his employment with half pay as contained in **P19** which, is *ultra-vires*.

It is common ground that there were three investigation reports submitted to the CPC by different Investigation Committees appointed by it to inquire into the question of non-implementation of the Board decision No. 38/1140 and dated 29.10.2013 on the charging of '**MUF**' for CODO outlets, namely;

a.) Internal Investigation Report dated 15.07.2024 (**P15**);

b) Interim preliminary investigation report dated 11.09.2024 (**P16**);

c) Final preliminary investigation report dated 10.12.2024 (**R3**)

What is significant here is, that the Petitioner in the instant application, had never sought to challenge either any of the observations made or any of the findings reached by any of those Committees in any of those three reports, namely; **P15**, **P16** and **R3**, rather, he had sought to heavily, rely on all those three reports in support of the instant application.

It is in this context, let me now, carefully, and briefly, examine the observations made and the findings reached by those Committees in their reports, namely; **P15**, **P16** and **R3**.

a) Internal Investigation Report dated 15.07.2024 (P15)

It was the position of the Petitioner that the Internal Investigation Report **(P15)** on the charging of '**MUF**' for CODO outlets did not find the Petitioner responsible for the non-implementation of the Board Decision No. 38/1140 with regard to the charging of '**MUF**' for CODO outlets.

It is in this regard, it would be important and pertinent to quote finding No. 2 contained in the Internal Investigation Report **(P15)** and the part thereof, which

deal with the Petitioner may be re-produced *verbatim* the same in its original version as follows;

> "2013-10-29 වන දිනැති 38/1140 දරන අධ්‍යක්ෂ මණ්ඩල තීරණයට අනුව සංස්ථාව සතු කාණ්ඩයේ බෙදුම්හල් මගින් බෙදුම්කාර ධූරත්ව ගාස්තුවක් අයකිරීමට පැහැදිලි උපදෙස් ලබාදී ඇති අතර, එම තීරණය 2014-01-01 වන දින සිට ක්‍රියාත්මක කිරීමට උපදෙස් දී ඇත. (පිටු අංක 72 - 80) එවකට අලෙවි කළමනාකාර (සිල්ලර) වශයෙන් කටයුතු කර ඇත්තේ එස්. එම්. සී. පී. සමරකෝන් - මහතා වන අතර, එම අධ්‍යක්ෂ මණ්ඩල තීරණය ක්‍රියාත්මක නොකිරීම සම්බන්ධයෙන් බැලූ බැල්මට ඔහුට චෝදනාවක් එල්ල වේ."

When translated into English, it reads thus;

> "As per the Board of Directors' decision No. 38/1140 dated 29-10-2013, clear instructions have been given to charge a dealership fee from the distribution outlets of the Corporation, and instructions have been given to implement that decision from 01-01-2014. (Pages 72 - 80) Mr. S. M. C. P. Samarakoon was the Sales Manager (Retail) at that time, and accusation is *prima facie* leveled against him for not implementing the said Board of Directors' decision."

Hence, the Internal Investigation Report **(P15)** in its finding No. 2 contained therein, had *prima facie*, identified the Petitioner as one of the Officers of the CPC who are responsible for the non-implementation of the Board Decision No. 38/1140 with regard to the charging of '**MUF**' for CODO outlets and therefore, the contention advanced by the learned President's Counsel for the Petitioner that the Internal Investigation Report **(P15)** on the charging of '**MUF**' for CODO outlets did not find the Petitioner responsible for the non-implementation of the Board Decision No. 38/1140 with regard to the charging of '**MUF**' for CODO outlets, is a utter falsehood and as such, it cannot factually, sustain and therefore, it should be rejected.

b) Interim preliminary investigation report dated 11.09.2024 (P16);

Moreover, upon a careful consideration of the observations which are of a grave and serious nature that was made by the Committee in its interim preliminary investigation report (**P16**) and contained at pages 6,7,8,9,10,11,12,13 and 14, thereof, it becomes abundantly, clear that the Committee had categorically, and explicitly, made certain allegations which is of a grave and serious nature against the Petitioner for the non-implementation of the Board Decision No. 38/1140 with regard to the charging of '**MUF**' for CODO outlets, wherein, it was *inter-alia*, observed by the Committee that the Petitioner had actively, contributed to the Economic Crisis faced by this Country in the recent past, by his reckless and negligent acts as enumerated therein by the Committee, which according to the Committee's view, was a direct consequence of the Petitioner's deliberate act of postponing the recovery of more than 5 Billions of Rupees from CODO outlets which was due and owing to the CPC, during his tenure of office as Marketing Manager (Retail) of the CPC, in view of his failure to implement the Board Decision No. 38/1140 with regard to the charging of '**MUF**' for CODO outlets thereby, causing damages to the CPC as well as the Economy of this Country to the value of more than 5 Billions of Rupees thus, adding an extra burden on the Sri Lankan Taxpayers.

However, it is to be observed that the Committee had notwithstanding the observations which are of a grave and serious nature made by it against the Petitioner in the interim preliminary investigation report (**P16**), nevertheless, recommended therein, that the Petitioner be transferred away from the Marketing Function in his present position as Marketing Manager (Retail) pending disciplinary inquiry and the CPC too, had without paying due attention to and/or without considering the gravity and/or seriousness of the observations so made by the Committee against the Petitioner in the interim preliminary investigation report (**P16**), merely, proceeded to transfer the Petitioner away from the Marketing Function in his present position as Marketing Manager (Retail) pending disciplinary inquiry as recommended, as manifest from the letter of transfer (**P17(a)**).

However, it clearly, appears to this Court that had the 1st and/or 2nd and/or 3rd Respondents considered the gravity and/or seriousness of the observations so made by the Committee against the Petitioner in its interim preliminary investigation report (**P16**) as enumerated above, in its correct perspective, the 1st and/or 2nd and/or 3rd Respondents ought to have interdicted the Petitioner with immediate effect.

Hence, the argument advanced by the learned President's Counsel for the Petitioner that the subsequent interdiction of the Petitioner by the decision of the 1st and/or 2nd and/or 3rd Respondents as contained in **P19**, is contrary to law and was conducted in a manner that is manifestly, and blatantly, unreasonable, *ultra vires* and malicious; and that the interdiction had been done with ulterior motives as a step in a series of acts of harassment that have been meted out to the Petitioner over a considerable period of time, cannot in any manner sustain in fact and as such it is not entitled to succeed and therefore, it too, should be rejected.

c) Final preliminary investigation report dated 10.12.2024 (R3)

It is also, not in dispute that the Committee so appointed by the 2nd Respondent-the Chairman of the CPC to investigate in to the non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs), had submitted its final preliminary investigation report (**R3**) to the 2nd Respondent-the Chairman of the CPC; and that the Chairman of the CPC-2nd Respondent had tabled it before the Board of Directors of the CPC at its Board Meeting held on 18.12.2024; and that the Board of Directors had at the said Board Meeting, decided that the Petitioner be interdicted upon serving charge sheet until the disciplinary action are completed and decision is taken on the Petitioner for; Board of Directors were of the view that it would be necessary for the avoidance of any prejudice/biasness in the disciplinary process while, the Petitioner was serving in the CPC during the process; and that the 3rd

Respondent had pursuant to the decision of the Board of Directors, interdicted the Petitioner with half pay subject to formal disciplinary inquiry as manifest from the letter dated 03.01.2025 (**P19**).

A copy of the minutes pertaining to the meeting of the Board of Directors held on 18.12.2024, had been furnished to this Court by the Respondents along with their joint statement of objections marked as **R4** and the part relevant to the interdiction of the Petitioner may be re-produced *verbatim* the same as follows;

> "The Board was of the view that the Manager (Marketing), who is transferred to the Shipping Function, following the recommendations of the interim report on MUF, should be interdicted upon serving charge sheet until the disciplinary actions on all three of them are completed and decisions taken on each of them. This measure was taken in order to avoid any possible prejudice/biasness in the disciplinary process, while any of them is serving in the Corporation during the process."

Hence, it becomes manifest, upon a plain and literal reading of the relevant part of the Board meeting as re-produced above, that the Board of Directors had decided to interdict the Petitioner who had been **previously**, transferred to the Shipping Function **following the recommendations of the interim report on MUF** (**P16**) upon serving charge sheet until the disciplinary actions on the Petitioner is completed and decisions taken on him, which is in my opinion, indicative of the fact that the Board of Directors had **on that occasion**, decided to interdict the Petitioner who had been previously, transferred to the Shipping Function **following the recommendations of the interim report on MUF** (**P16**), on the basis of the final preliminary investigation report (**R3**) which was before it at that time when it clearly, and unequivocally, stated therein, that the Manager (Marketing) who had **then**, been transferred to the Shipping Function **following the recommendation of the interim report on MUF** (**P16**), should **now**, be interdicted upon serving charge sheet until the disciplinary actions on the Petitioner is completed and decisions taken on him even though it was not

explicitly, stated so nor was it so stated in the letter of interdiction issued to the Petitioner by the 3rd Respondent (**P19**). [Emphasis is mine]

It thus, appears to be an omission so to state both in the decision of the Board of Directors (**R4**) and in the letter of interdiction (**P19**) and in the circumstances, the argument advanced by the learned President's Counsel for the Petitioner the subsequent interdiction of the Petitioner by the decision of the 1st and/or 2nd and/or 3rd Respondents as contained in **P19**, is contrary to law and was conducted in a manner that is manifestly, and blatantly, unreasonable, *ultra vires* and malicious; and that the interdiction had been done with ulterior motives as a step in a series of acts of harassment that have been meted out to the Petitioner over a considerable period of time, cannot in any manner sustain in fact and as such it is not entitled to succeed and therefore, it too, should be rejected on this ground too.

It is in this backdrop of the case, it would be pertinent at this juncture, to examine the observations and the recommendations made by the Committee in its final preliminary investigation report (**R3**) in respect of the Petitioner on the allegation for the non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs).

Upon a careful perusal of the Final Preliminary Investigation Report of the Committee (**R3**), it becomes, abundantly, clear that the similar set of observations and recommendations of grave and serious nature had been made by it against the Petitioner as contained in pages 10, 11, 12, 13, 14, 17, 18, 25, 26, 28, 29 and 30 thereof; and that the Committee had thereby, come to a definite finding that the Petitioner had directly, been responsible for the non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs) thereby causing to the CPC as well as to the economy of this Country a loss of more than 5 Billions of Rupees which had contributed

to the Economic Crisis of this Country occurred in the recent past, thus, clearly, committing an offence.

Hence, all the three investigation reports (**P15**), (**P16**) and (**R3**) had clearly, and unequivocally, revealed as enumerated above, that the Petitioner is directly, responsible for the non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs) which had culminated in causing to the CPC as well as to the economy of this Country a loss of more than 5 Billions of Rupees which had ultimately, contributed to the Economic Crisis of this Country occurred in the recent past, thus, clearly, committing an offence.

In view of the observations and the recommendations of such a grave and serious nature made by the Committee not only in its Interim Preliminary Investigation Report (**P16**) but also in its Final Preliminary Investigation Report (**R3**), and in the investigation report (**P15**), the pertinent question that would arise for our consideration is; **Can a law abiding, sensible and reasonable person consider it inappropriate or excessive to interdict an employee who had been found to be complicit in causing a loss of more than 5 Billions of Rupees to the CPC as well as to the Economy of this Country which had ultimately, contributed to the economic crisis of this Country that occurred in the recent past when the disciplinary proceedings are pending against him for the non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs)** as rightly, contended by the learned State Counsel? In my view, this question ought to be answered in the negative and against the Petitioner in view of the observations and the recommendations of such a grave and serious nature made against him by the Committee not only in its Interim Preliminary Investigation Report (**P16**) but also in its Final Preliminary Investigation Report (**R3**) as clearly, enumerated above. [Emphasis is mine]

I would therefore, hold that the 3rd Respondent had acted within the powers vested in him by Rules 9(a) of the Disciplinary Rules (**P14**) when he had interdicted the Petitioner by the decision contained in **P19** in pursuant to the decision taken by the Board of Directors at its meeting as manifest from **R4**, taking into his consideration the observations and the recommendations of such a grave and serious nature made against the Petitioner by the Committee not only in its Interim Preliminary Investigation Report (**P16**) but also in its Final Preliminary Investigation Report (**R3**) and the investigation report (**P15**) as clearly, enumerated above.

Hence, I would see no illegality and/or irrationality and/or procedural impropriety in the decision-making process or the decision itself made by the 3rd Respondent as contained in the document (**P19**) for; it would have been the most suitable decision that ought to have been made by a law abiding, sensible and reasonable person in the circumstances clearly, enumerated above.

I would therefore, find myself unable to agree with the contention so advanced by the learned President's Counsel for the Petitioner that the subsequent interdiction of the Petitioner by the decision of the 1st and/or 2nd and/or 3rd Respondents as contained in **P19**, is contrary to law and was conducted in a manner that is manifestly, and blatantly, unreasonable, *ultra vires* and malicious; and that the interdiction had been done with ulterior motives as a step in a series of acts of harassment that have been meted out to the Petitioner over a considerable period of time for; the decision to interdict the Petitioner would have been the most suitable decision that ought to have been made by a law abiding, sensible and reasonable person in the circumstances clearly, enumerated above and therefore, it cannot in any manner, sustain in fact and as such it is not entitled to succeed and therefore, it should be rejected *in-limine*.

This brings to me to the next contention advanced by the learned President's Counsel for the Petitioner in that it was contended by him that the Respondents could have transferred the Petitioner pending disciplinary inquiry or sent him on

compulsory leave with full pay as provided for by Rule 9(b) of the Disciplinary Rules (**P14**) in the absence of any such recommendation made in its Interim Preliminary Investigation Report(**P15**) or in its Final Preliminary Investigation Report (**R3**) by the Committee, hence, the 3rd Respondent had acted *ultra-vires* in interdicting the Petitioner in such circumstances and therefore, interdiction is illegal, irrational and hence, bad in law and as such, the decision to interdict the Petitioner (**P19**) ought to be quashed by an order in the nature of a writ of *Certiorari.*

It may now, be examined.

Rule 9(b)(i),(ii),(iii) and (iv) of the Disciplinary Rules is relevant in this regard and it enacts thus;

> "(i) The non-payment or the payment of one-half of the emoluments to an officer under interdiction for the period of interdiction is decided by the Disciplinary Authority.
>
> (ii) A public officer interdicted under the following circumstances should not be paid any emoluments during the period of interdiction.
>
> Where legal proceedings have been initiated for a terrorist offence or anti-government activities or criminal offence or an offence or bribery or corruption or fraud.
>
> Where a misappropriation of a serious nature of public funds and property is committed or where they are caused are caused to be destroyed or depreciated by acts of commission or omission
>
> (iii) In the case of instances not falling under sub-section above, the Disciplinary Authority may decide either not to pay the emoluments or to

pay one-half of the emoluments in consideration of the seriousness of the charge, prior record of the service of the employee, his financial needs, etc.

(iv) An employee's "emoluments" means the emoluments of his substantive post. It should not include any allowance in the nature of a duty allowance, or a reimbursement of expenditure incurred on official duty such as traveling, transport and combined allowance."

In the light of the Rule 9(b) of the Disciplinary Rules, the general rule formulated therein, is that the non-payment or the payment of one-half of the emoluments to an officer under interdiction for the period of interdiction is decided by the Disciplinary Authority taking into its consideration the seriousness of the charge etc...

Hence, under Rule 9(b) of the Disciplinary Rules (**P14**), the Disciplinary Authority is vested with the discretion to determine the question as to the non-payment or the payment of one-half of the emoluments to an officer under interdiction for the period of interdiction taking into its consideration the seriousness of the charge.

In this instance, in considering the gravity and the seriousness of the observations and the recommendations made by the Committee not only in its Interim Preliminary Investigation Report (**P16**) but also in its Final Preliminary Investigation Report (**R3**), and in the investigation report (**P15**) against the Petitioner on the non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs), it clearly, appears that the 3rd Respondent had acted within his power vested in him by Rule 9(b) of the Disciplinary Rules (**P14**), when he had decided to interdict the Petitioner with half pay and hence, the decision of the 3rd Respondent to interdict the Petitioner with half pay was entirely, justified.

Hence, the Chairman and/or the Managing Director of the CPC, were entirely, justified in not exercising the power vested in them by Rule 9(a) of the Disciplinary Rules (**P14**) to transfer the Petitioner or send him on compulsory leave with full pay pending disciplinary inquiry in taking into one's consideration the gravity and the seriousness of the observations and the recommendations made by the Committee not only in its Interim Preliminary Investigation Report (**P16**) but also in its Final Preliminary Investigation Report (**R3**), and in the investigation report (**P15**) against the Petitioner on the non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs).

Hence, the further contention advanced by the learned President's Counsel for the Petitioner that the interdiction with half pay is not proportionate to the offence alleged to have been committed by the Petitioner; and that the disproportionate treatment effected upon the Petitioner is itself conclusive evidence of bias, and therefore, the 1st Respondent has perpetrated a bias in purportedly, seeking to avoid a bias, cannot in any manner, sustain both in fact and law when one takes into his consideration, the gravity and the seriousness of the observations and the recommendations made by the Committee not only in its Interim Preliminary Investigation Report (**P16**) but also in its Final Preliminary Investigation Report (**R3**), and in the investigation report (**P15**) against the Petitioner on the non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs), and as such it too, should be rejected *in-limine*.

It was the principal position so adverted to, by the Petitioner in his petition in support of the allegations so levelled against the Respondents therein, by him that, the interdiction of the Petitioner's employment was effected with ulterior motives as a step in a series of acts of harassment that had been meted out to the Petitioner over considerable period of time.

It may now, be examined.

In examining the principal position so adverted to by the Petitioner in its correct perspective, it would I think, be appropriate and expedient at this juncture, to direct my judicial mind to the background facts and circumstances alleged by the Respondents in their joint statement of objections for the appointment of a number of Committees by the CPC and/or its Chairman as enumerated above, to investigate into the question as to the non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs).

In this connection, the Respondents had in their joint statement of objections, furnished to this Court the Minutes of the 50th meeting of the Committee on Public Enterprises (COPE) held in the Committee Room No. 05 of the Parliament of Sri Lanka on the 07.11.2023 at the 4th Session of the Parliament marked as '**R1**'. What is to be noted here is that the Petitioner had never sought to deny and/or refute and/or challenge either the very document itself (**R1**) or the contents thereof, and therefore, the document (**R1**) and its contents remain unchallenged and uncontroverted by the Petitioner.

The Committee on Public Enterprises (hereinafter called and referred to as 'the COPE') under item No. 9 of the Minutes of the 50th meeting COPE, had having expressed its strong dissatisfaction and displeasure towards the actions of the officials of CPC, highlighting that the Board of Directors always had the opportunity to take necessary decisions occasionally, if needed but, no step had been taken to recover such a significant due for more than ten years, stressed the CAO to take firm decisions regarding these types of malpractices and officials, as he is the Chief Accounting Officer and pointed out that financial malpractices like these, are definitely leading the minds of the general public towards the privatization of State owned Enterprises; and that in the circumstances, the COPE had directed the CAO/AO to submit a detailed report

to the COPE on how the recovery will be proceeded, the total dues from each of the dealers with names and numbers, the amount that had been already collected, the areas where the filling stations situated, the responsible officials, and the actions that have to be taken against them, within two weeks. It was this direction of the COPE on the CPC that led to have initiated the investigation into the non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs).

Hence, it was due to this compulsion by the COPE on the CPC that it had to go into a matter that had begun long time before in the year 2014 afresh, and therefore, it clearly, appears that not by way of a further step to harass the Petitioner as alleged by him and hence, the allegation so levelled against the Respondents cannot in any manner, sustain and as such it ought to be rejected *in-limine*.

Besides, upon a careful comparison of the set of charges then, levelled against the Petitioner in the year 2015 by the CPC with the charges now, levelled against him on the question of the non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs), it clearly, appears that the former charges are not in any manner related to the latter charges now, levelled against the Petitioner by the CPC pursuant to an investigation conducted by it as aforesaid, pursuant to a direction by the COPE as aforesaid.

Moreover, the Petitioner had not in any manner, adduced any reason substantiating the allegation levelled against the Respondents that the interdiction of the Petitioner's employment was effected with ulterior motives as a step in a series of acts of harassment that had been meted out to the Petitioner over considerable period of time.

In the circumstances, the pertinent question that would now, arise for our consideration is; Can it be said that the interdiction of the Petitioner's employment was effected with ulterior motives as a step in a series of acts of harassment that had been meted out to the Petitioner over considerable period of time?, in view of the above, this question should in my view, be answered in the negative against the Petitioner for; it had never been established and/or substantiated in evidence, by the Petitioner as enumerated above.

In view of the foregoings, I can see no illegality and/or any irrationality and/or procedural impropriety in the decision of the 3rd Respondent contained in the document (**P19**) to interdict the Petitioner with half pay.

I would therefore, hold that the Petitioner had not made out a case before this Court for a mandate in the nature of a writ of *Certiorari* to quash the decision of the 3rd Respondent contained in the document (**P19**) to interdict the Petitioner with half pay.

With regard to the further contentions advanced by the learned President's Counsel for the Petitioner on the frivolity and illegality of the charges against the Petitioner; the contention based on the doctrine of approbation and reprobation; the contention that in any event the present interdiction is not justified on the very charges against the Petitioner; the contention that the 1st Respondent's breach of the principle of *audi alterum partem*; I am of the view that any of them cannot in any manner, be raised before this Court in the instant application as it is presently, constituted for; the Petitioner in the instant application only seeks to challenge the interdiction with half pay, of the Petitioner's employment effected through letter dated 03.01.2025 (**P19**) but not the validity of the charges levelled against him by the Respondents on the said issue, and hence, those would be matters that may be raised not in an application of this kind but in a proper forum at an appropriate time and therefore, the contentions so advanced by the learned President's Counsel for the Petitioner do not in any manner, arise for our consideration in the instant application as it is presently, constituted.

With regard to the preliminary legal objection raised by the learned State Counsel for the Respondents as to the maintainability of the instant application on the premise that the issue in the instant action had arisen from the contract of employment and therefore, governed by the private law and not by the public law and therefore, it is not amenable to writ jurisdiction of this Court and as such the instant action should be dismissed *in-limine*.

It may now be examined.

It is not in dispute that the Disciplinary Rules of the CPC had been formulated by the CPC by virtue of the statutory powers vested in it by section 6(o) of the Act; and that the Rule 2 thereof, *inter-alia* stipulates the objects and the purposes of the Disciplinary Rules as follows;

> "The provisions of these Disciplinary Rules are intended and shall be construed to achieve the following objects;
>
> a) Simplicity and uniformity of procedure;
> b) Observance of fair procedure;
> c) Observance of Natural Justice."

Hence, it appears that the object and the purposes of the Disciplinary Rules (**P14**)intended to be achieved by the CPC, is for the observance of fair procedure as well as for the observance of Natural Justice.

In the circumstances, it clearly, appears that the CPC itself had thus, submitted itself to the jurisdiction of the Public Law by expressly, incorporating Rule 2 into the Disciplinary Rules (**P14**) and hence, the CPC is now, estopped from raising such a preliminary objection as to the maintainability of the instant application on the premise as stipulated above, and as such the preliminary legal objection is not entitled to succeed especially in view of Rule 2 of the Disciplinary Rules (**P14**) and hence, it should be rejected.

In view of the foregoings, I would hold that the Petitioner is not entitled to a mandate in the nature of writ of *Certiorari* of kind as prayed for in prayer 'c' of

the petition of the Petitioner. Hence, the resultant position would be that the Petitioner is not entitled to a mandate in the nature of writ of *Mandamus* of kind as prayed for in prayer 'd' of the petition of the Petitioner too, on account of him being not entitled to a mandate in the nature of a writ of *Certiorari*.

In view of the facts and law set out above, I would hold that the instant application cannot sustain both in fact and law and therefore, cannot be entitled to succeed.

In the result, I would proceed to dismiss the instant application with costs.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL