

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

In the matter of an application under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for mandates in the nature of Writs of Mandamus.

1. Vinayagamoorthi Subramaniam
Nunasai Road, Mathagal, Jaffna District.
2. Kanthasamy Rajachandran
Vedi Arasan Road, Kovalam,
Karainagar, Jaffna District.
3. Pathimarasa Leeliyan Kurus
11th Vaddaram, Main Road,
Nedunathivu, Jaffna District.

Petitioners

C.A. Writ Application No: 591/2024

Vs.

1. Hon. Douglas Devananda
Minister of Fisheries,
Ministry of Fisheries and Aquatic Resources,
New Secretariat, Maligawatte Road,
Colombo 10.
- 1A. Hon. Anura Kumara Dissanayake
Minister,
Ministry of Fisheries and Aquatic Resources,

New Secretariat, Maligawatte Road,
Colombo 10.

- 1B. Hon. Ramalingam Chandrasekar
Minister,
Ministry of Fisheries, Aquatic & Ocean
Resources,
New Secretariat, Maligawatte Road,
Colombo 10.

Substituted Respondent

2. Mrs. M. K. N. K. Somaratne
Secretary,
Ministry of Fisheries and Aquatic Resources,
New Secretariat, Maligawatte Road,
Colombo 10.

- 2A. Mr. M. P. N. M. Wickramasinghe
Secretary,
Ministry of Fisheries and Aquatic Resources,
New Secretariat, Maligawatte Road,
Colombo 10.

- 2B. Mr. Sampath Manthrinayake
Secretary,
Ministry of Fisheries, Aquatic & Ocean
Resources,
New Secretariat, Maligawatte Road,
Colombo 10.

Substituted Respondent

3. Mr. S. J. Kahawatta
Director General,
Department of Fisheries and Aquatic Resources,
New Secretariat,
Maligawatte,
Colombo 10.

4. Mr. M. Piiatheepan (Acting)
District Secretary,
District Secretariat,
Jaffna.

Respondents

5. The Attorney General
The Attorney General's Department,
Colombo 12.

Added Respondent

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

Counsel : Chandaka Jayasundere, P.C. with Imaz
Imtiyaz, Praveen Wijeweera and
Kavindu Tennakoon instructed by M. S. K. Peiris
for the Petitioners.
R. Gooneratne, S.C. for the Respondents.

Argued on : 06.02.2026

Written Submissions : Petitioners : 20.03.2026
tendered on Respondents : 23.03.2026

Decided on : 05.05.2026

Dhammika Ganepola, J.

Factual Matrix of the Application

The Petitioners claim that they are leaders of several fishing communities in the Jaffna District and have initiated this public-interest litigation to prevent the exploitation of coastal fisheries resources and to protect the marine environment.

The Petitioners state that, under Section 28 A of the Fisheries and Aquatic Resources Act No. 2 of 1996, as amended by Act No. 11 of 2017 (hereinafter referred to as the “Act”), bottom trawling is prohibited, and any contravention or failure to comply with Section 28 A shall be an offence punishable by imprisonment under Section 49 of the Act. Nevertheless, the Petitioners state that they observed several mechanised boats openly engaging in illegal bottom trawling in the Territorial Sea within the Jaffna District, off the coasts of Delft Island, Analaithivu, Eluvaithivu, Karainagar and Valvettithurai. It is claimed that there are approximately 1000 mechanised boats currently in possession of illegal trawl nets, berthed at anchorages or harbours in the area. Petitioners further claim that the mechanised nature of bottom trawling is inconsistent with the objective of the National Fisheries and Aquaculture Policy of the Ministry of Fisheries and Aquatic Resources 2018, damages and degrades fragile marine ecosystems on multiple interrelated levels and is an unsustainable fishing practice. In 2021, there had been 24,670 active fishermen operating 6011 small-scale fishing boats which supported 105,680 people for their income in the Jaffna District. The Petitioners state that these communities are affected directly or indirectly by this illegal bottom trawling, as small-scale fishermen are:

- unable to set their own fishing gear in areas where mechanised boats use bottom trawl nets,
- the fish, crustaceans, and molluscs that small-scale fishermen traditionally target with gillnets and line fishing are instead being harvested by mechanised boats using bottom trawl nets,
- the short-term and medium-term ecological degradation of marine habitats and marine resources decreases overall fish productivity.

As a result of the above, it is claimed that many small-scale fishermen are forced to resort to other activities than traditional fishing methods. However, the Petitioners complain that, although mechanised boats continue to operate bottom trawling within the Jaffna District, the Respondents have failed to take the necessary action to prevent illegal bottom trawling and to implement the law concerning the operation of bottom trawling boats. Therefore, the Petitioners state that the Respondents' failure to enforce the provisions of the Act, specifically Section 28A of the Act, amounts to a violation of their statutory and administrative duty.

In the above premise, the Petitioners seek in the nature of the Writs of Mandamus directing Respondents to enforce and/or implement the provisions of the Fisheries and Aquatic Resources Act to charge and prosecute any person violating the said laws by engaging in bottom trawling and to seize, remove and confiscate any mechanism installed on boats for the purpose of engaging in bottom trawling in the Jaffna District.

The Respondents state that they have consistently taken adequate and necessary measures possible to arrest and have taken legal action against persons utilising bottom trawl nets in fishing operations in terms of the law.

The Statutory Framework under the Fisheries and Aquatic Resources Act in respect of Bottom Trawling

Section 28A of the Act imposes a prohibition on fishing operations utilizing bottom trawl nets. Said Section 28A(1) is as follows:

28A(1)(a) No person shall engage in or cause any other person to be engaged in fishing operations utilizing bottom trawl nets, including nets with or without two wings or using vertical poles at the two free ends of the net, to be towed by motorized or mechanized fishing boats.

(b) No person shall use, possess, import, transport, purchase or sell any bottom trawl net, to be towed by a motorized or mechanized fishing boat for the purpose of carrying out fishing operations in Sri Lankan waters.

The term “bottom trawl net” referred to in the above Section is defined in the interpretation Section (Section 66) of the Act as follows.

"bottom trawl net" means a towing net having a cone shaped body and a bag or cod end (madiya) connected to the apex with or without two wings connected to the other end and towed by motorized or mechanized fishing boats.

Section 49(2AA) of the Act provides that any person who contravenes or fails to comply with the provisions of section 28A of the Act shall be guilty of an offence and shall be liable to the following penalties:

49(2AA) Any person who contravenes or fails to comply with the provisions of section 28A of this Act shall be guilty of an offence and shall, on

conviction after summary trial before a Magistrate, be liable to an imprisonment for a term not exceeding two years or to a fine not less than fifty thousand rupees.

The provisions stated above are mandatory and they are not optional. Accordingly, the statute establishes both a prohibition and enforcement obligation upon the relevant authorities. As per Section 2(2) of the Act, the 2nd Respondent, Director-General of Fisheries and Aquatic Resources (hereinafter referred to as the "Director-General") appointed under Section 2(1) of the Act, is responsible for the administration and giving effect to the provisions of this Act. The statutory and administrative duty devolved upon the Respondents is not in dispute. The Respondents claim that they have taken all possible measures to arrest and take legal action against the persons involved in bottom trawling using bottom trawl nets. The Respondents submitted several documents marked R1(a) to R1(g) to prove that the actions that they have taken against the violation of the Act by filing cases in respect of 8 incidents related to bottom trawling in the Magistrate's Courts in Kayts and Jaffna.

The Petitioners contend that aforesaid incidents in relation to bottom trawling occurred between 23.02.2023 and 7.12.2023. However, no prosecutions had been initiated in the years of 2024 and 2025. Furthermore, it is alleged that not a single prosecution has been initiated under Section 28A(1) of the Act in respect of the possession of a bottom trawl net. Moreover, the Petitioners submit that despite approximately about 36 trawlers currently engaging in bottom trawling activities within the Jaffna District, no effective and tangible action has been taken by the Respondents in this regard. The Petitioners' apprehension is that such prosecutions are inadequate and fail to demonstrate sustainable enforcement of the statutory duties incumbent upon the Respondents.

The Respondents state in their Written Submissions that, despite the statutory obligation of the officers in the Fisheries Department to take action against bottom trawling under the Fisheries Act, they have faced practical difficulties. These challenges include a lack of assistance and resources, as well as strong resistance from violators of the law, which have prevented the Respondents from arresting and prosecuting those who break the law. It appears that this was a core reason for representatives of small-scale fishing communities to initiate these proceedings. It must be noted that "resistance from violators of law" is never an

excuse for the prosecution's failure to discharge its mandatory statutory functions. If this Court were to accept any “resistance from violators of the law” as a valid reason for not implementing or enforcing the law, the existence of law enforcement institutions would be rendered redundant. The execution of statutory duties by the prosecution is not contingent upon the cooperation of the accused and it is a plea which this Court is patently disinclined to accept. In any event, this goes further to prove that the Respondents had failed on certain occasions to perform their statutory duties.

Nevertheless, the inability of the institution to effectively address its challenges due to structural, managerial, or resource limitations can be invoked only on very rare occasions. Although the Respondents state that practical difficulties and lack of resources prevented them from taking legal action against the violators, no materials were placed before this Court to support this assertion. However, in the instant application, the continuous requests made by the aggrieved parties, as referred to in document P2(a), and the Respondents’ repeated failures to take steps under the Act in respect of considerable amounts of alleged incidents of bottom trawling do not justify this defence of institutional incapacity.

Vagueness of Prayers of the Petitioners

The Respondents contend that the Petitioners in the instant application have failed to aver and pray for specific relief, and that the main reliefs prayed for in the Petition are vague, ambiguous, and formulated in a wholly uncertain manner. The Respondents further state that the relief sought must be specific and should address the concerns of the Petitioner. In the event that this Court grants the relief sought, the highest degree of vagueness prevails as to which provision of the Act is to be complied with. The Respondents submit that the varied complaints in this matter necessitate a specific identification of the duties to be performed. They contend that a general directive would lack the requisite clarity, and that each directed order must be expressly tethered to a particular provision of the Act. The Respondents are concerned about the potential consequences of a Contempt of Court application for non-compliance with a court order that is based on vague requests.

The Respondents rely on the decision in **Annalingam Annarasa Vice President and Others v. S. J. Kahawatta Director General and Others, CA Writ 21/2022**, decided

on 13.02.2023 by Hon. Justice Sobhitha Rajakaruna with my concurrence. One of the prayers in the said case is as follows:

(d) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 1st, 3rd, and 4th Respondents to arrest those who act in violation of the provisions of Fisheries (Regulation of Foreign Fishing) Act No. 15 of 1979 (Amendment) Act No. 1 of 2018 and to take legal actions against such violation as stipulated therein;

In the said case, the Court observed that:

“The manner in which the prayer of the Petition is formulated would create a harmful right to instigate contempt charges on an alleged inaction or omission upon a matter which the Respondents were not made aware of during the process of exercising powers under the Sections of those Statutes. For an example, if the Court decides to grant the reliefs contained in paragraph '(d)' of the prayer, then at any moment after issuing such order, if anybody violates, without the knowledge of the Respondents the provisions of the Fisheries Act in anywhere in the island, the Petitioners will be able to instigate at the outset contempt proceedings against any one or more Respondents.”

Similarly, in the instant application, the prayer of the Petition is as follows:

(b) Grant and issue a mandate in the nature of the Writ of Mandamus directing the 3rd Respondent and/or anyone or more of the Respondents to enforce and /or implement the provisions of the Fisheries and Aquatic Resources Act (as amended) to charge and prosecute any person held to be in violation of the said laws by engaging in bottom trawling in the seas adjacent to Jaffna District

(c) Grant and issue a mandate in the nature of Writ of Mandamus directing the 3rd Respondent and/or anyone or more of the Respondents to enforce and/or implement the provisions of the Fisheries and Aquatic Resources Act (as amended) to seize, remove and confiscate any mechanism installed on board for the purpose of engaging in bottom trawling in the Jaffna District.

It is apparent from the above prayer that the Petitioners seek a “general” intervention of this Court, as opposed to an “event-specific” intervention to

implement the provisions of the Act relating to the violation of laws by engaging in bottom trawling. Thus, the reliefs sought are not adequately event-specific for this Court to grant the same. Where the relief sought is too broad, especially in an application seeking a Writ in the nature of Mandamus, this Court would exercise repercussions of granting an open-ended relief are accurately explained in the *Annalingam Annarasa* Case as follows:

“... That is all the more why the governmental administrative process or any other process leading to litigation has prescribed initial steps to be followed. Allowing the reliefs as prayed for by the Petitioners would circumvent such preliminary steps, resulting unusual contempt proceedings being instituted straight away against the Respondents based only upon such Order/Judgment. ...”

Conclusion

In the above circumstances, I am not inclined to grant any of the reliefs prayed for in the prayer of the Petition. Accordingly, the application is dismissed without cost. However, I am of the view that the Petitioners are not precluded from invoking the jurisdiction of this Court where the Respondents have failed to take action against those who are engaged in the bottom trawling, having received reliable complaints and/or evidence to that effect, on a case-by-case basis as opposed to a general intervention as sought in the instant application.

Application dismissed.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal