

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

*In the matter of an Application for  
Orders in the nature of Writs of  
Certiorari, Prohibition and Mandamus  
under Article 140 of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka.*

Dr. Rathnamali Sovis,  
No. 161,  
Thummodara Road,  
Puwakpitiya,  
Avissawella.

**CA (Writ) App. No. 679/2024**

**PETITIONER**

**Vs.**

1. Hon. Upaly Abeyrathne,  
(Retired Judge of the Supreme Court)  
Chairman,  
No. 42/10, Beddagana North,  
Pita Kotte.
2. Hon. Daya Chandrasiri Jayathilaka,  
(Retired Judge of the Court of Appeal)  
Member,  
No. 24, Diyawannawa Gardens,  
Pelawatta, Battaramulla.

3. Chandra Fernando,  
(Retired Inspector-General of Police)  
Member,  
No. 1, Shrubbery Gardens,  
Colombo 04.

Presidential Commission of Inquiry to inquire into and obtain information in relation to alleged Political Victimization of Public Officers, Employees of State Corporations, Members of the Armed Forces and the Police Service who held posts during the period commencing 8<sup>th</sup> January 2015 and ending 16<sup>th</sup> November 2019.

4. Mrs. Pearl K Weerasinghe,  
Secretary,  
Presidential Commission of Inquiry to inquire into and obtain information in relation to alleged Political Victimization of Public Officers, Employees of State Corporations, Members of the Armed Forces and the Police Service who held posts during the period commencing 8<sup>th</sup> January 2015 and ending 16<sup>th</sup> November 2019.

5. Secretary to the President,  
Presidential Secretariat,  
Colombo 1.

6. Dr. Harini Amarasuriya,  
Hon. Prime Minister,  
Member of the Cabinet,  
No. 58, Sir Ernest De Silva Mawatha,  
Colombo 07.

7. Hon. Vijitha Herath,  
Member of the Cabinet,  
Minister of Foreign Affairs,

Foreign Employment and Tourism  
Ministry of Foreign Affairs, Republic  
Building,  
Sir Baron Jayathilake Mawatha,  
Colombo 01.

- 7A. K. D. Lal Kantha,  
Minister of Agriculture, Livestock,  
Land and Irrigation,  
No. 80/5,  
"Govijanamandiraya",  
Rajamalwatta Lane, Battaramulla.
- 7B. Bimal Rathnayake,  
Minister of Transport, Highways, Ports  
and Civil Aviation,  
7th Floor, Sethsiripaya Stage II,  
Battaramulla.
- 7C. Sunil Handunneththi,  
Minister of Industry  
Entrepreneurship Development,  
73/1, Galle Road, Colombo 03.
- 7D. Ramalingam Chandrasekar,  
Minister of Fisheries, Aquatic and  
Ocean Resources,  
Ministry of Fisheries,  
New Secretariat, Maligawatta,  
Colombo 10.
- 7E. Prof. Anil Jayantha Fernando,  
Minister of Labour  
6<sup>th</sup> Floor,  
Mehewara Piyesa,  
Narahenpita, Colombo 05.
- 7F. Samantha Viddyaratna,  
Minister of Plantation and Community  
Infrastructure,  
'Suwasiripaya',

No 385,  
Rev. Baddegama Wimalawansa Thero  
Mawatha,  
Colombo 10.

7G. Anura Karunathilaka,  
Minister of Urban Development,  
Construction and Housing,  
2<sup>nd</sup> Floor, "Sethsiripaya",  
Sri Jayawardanapura Kotte,  
Battaramulla.

7H. Dr. Nalinda Jayatissa,  
Minister of Health and Mass Media,  
No 385,  
Rev. Baddegama Wimalawansa Thero  
Mawatha,  
Colombo 10.

7I. Prof. A.H.M.H. Abayarathna,  
Minister of Public Administration,  
Provincial Councils and Local  
Government,  
Independence Square,  
Independence Avenue, Colombo 07.

7J. Wasantha Samarasinghe,  
Minister of Trade, Commerce, Food  
Security and Cooperative Development,  
No. 492, R. A. De Mel Mawatha,  
Colombo 03.

7K. Harshana Nanayakkara,  
Minister of Justice and National  
Integration,  
No. 19, Sri Sangaraja Mawatha,  
Colombo 10.

7L. Saroja Savithri Paulraj,  
Minister of Women and Child Affairs

7M. Dr. Upali Pannilage,

Minister of Rural Development, Social  
Security and Community  
Empowerment

- 7N. K.M. Ananda Wijepala,  
Minister of Public Security and  
Parliamentary Affairs,  
Floor 14, Suhurupaya,  
Subuthipura Road, Battaramulla.
- 7O. Dr. Hinduma Sunil Senevi,  
Minister of Buddhasasana, Religious  
and Cultural Affairs,  
8<sup>th</sup> Floor, Sethsiripaya, Battaramulla.
- 7P. Sunil Kumara Gamage,  
Minister of Youth Affairs and Sports,  
1<sup>st</sup> Floor, 2<sup>nd</sup> Stage, Sethsiripaya,  
Battaramulla.
- 7Q. Prof. Crishantha Abeysena,  
Minister of Science and Technology,  
Level 11, Unit No: 1101,  
One Galle Face Tower,  
No 1 A, Centre Road, Galle Face,  
Colombo 02.
- 7R. (Eng.) Kumara Jayakody,  
Minister of Energy,  
No. 437 Galle Road, Colombo 03.
- 7S. Dammika Patabendi,  
Minister of Environment,  
Sobadam Piyasa,  
No. 416/C/1,  
Robert Gunawardana Mawatha,  
Battaramulla.
8. Secretary to the Cabinet of Ministers,  
Office of the Cabinet of Ministers,  
Republic Building,  
Sir Baron Jayathilake Mawatha,

Colombo 01.

9. Hon. Attorney General,  
Attorney General's Department,  
Hulfsdorp,  
Colombo 12.
10. Piyadasa Kudabalage,  
No. 8, Rodrigo Mawatha,  
Galpoththa Road, Nawala.
11. Y. Don. Nihal Jayatilake,  
No. 465/2, Valivita Road,  
Mahadeniya, Kaduwela.
12. R.A.A.K Ranawaka,  
No. 233/35, Mahindawatta,  
Kalalpitiya, Pasyala.
13. R.G. Bandula Thilakasiri,  
No. 37/1, Kurunduhinna, Kegalle.
14. W. Wimalasena,  
No. 05, Morupola, Gampaha.
15. Rohan Waliwita,  
No. 33,  
Hospital Road, Galawilawatta,  
Homagama.

**RESPONDENTS**

**Before:** Dr. D. F. H. Gunawardhana, J.

**Counsel:**

Suren Gnanaraj with Rashmi Dias Goonewardena instructed by K.U Gunasekara for the Petitioner.

Faisz Musthapa, P.C. with Bishra Iqbal for the 3<sup>rd</sup> Respondent.

Yuwin Muthugama instructed by Oshadi Fernando for the 10<sup>th</sup> Respondent.

Monohara Jayasinghe, D.S.G. with Abigail Jayakody, S.C. for the 5<sup>th</sup> – 7<sup>th</sup>, 7I, 7J, 7M, 7N, 7O, 8<sup>th</sup>, and 9<sup>th</sup> Respondents.

**Argued on:** 12.12.2025

**Delivered on:** 02.06.2026

**Dr. D. F. H. Gunawardhana, J.**

## **Judgement**

### **Introduction**

The Petitioner is the wife of late Mr. Thusith Mudalige, a Senior Deputy Solicitor General (DSG), who happened to be summoned by the Commission of Inquiry appointed in terms of Commissions of Inquiry Act, No. 17 of 1948 (as amended), by the Head of the State to inquire into the allegations referred to in the warrant of appointment which are marked as **P5** and **P6** annexed to the Petition. The said commission had been appointed to look into the allegations of political victimisation during the period starting from 8<sup>th</sup> January 2015 till 19<sup>th</sup> November 2019.

The commissioners appointed by the said warrant marked as **P5** and **P6** are the 1<sup>st</sup> to 3<sup>rd</sup> Respondents; the 1<sup>st</sup> Respondent is a former Supreme Court judge, the 2<sup>nd</sup> Respondent is a former Court of Appeal judge, and the 3<sup>rd</sup> Respondent is a former Inspector General of Police. Since there are certain adverse findings by the said Commission of the said late Mr. Mudalige, former DSG, his widow seeks to challenge the same by seeking a *Writ of Certiorari* to quash the said findings and recommendations against the late Mr. Mudalige solely for the purpose of protecting his good name and reputation, not only in the legal profession but also as a citizen of this country.

After the issuance of formal notice, the Respondents have filed their respective Objections. Thereafter, this was argued before me on 12.12.2025, and the following arguments were advanced by the respective counsel at the hearing who represented the Petitioner and the Respondents; hence, this judgement.

## **Arguments**

The first contention of Mr. Suren Ganaraj is that the mandate of the commission is reflected in **P5** and **P6** documents do not include the mandate of the officers of Attorney General's Department are subject to the inquiry; therefore, making any findings against the Petitioner's husband, who has been nominated by the Attorney General at the request of the Government to serve on a board or to prosecute in a criminal case cannot be the subject of an inquiry of a presidential commission appointed by the mandate of **P5** and **P6**.

The second contention is that the Attorney General's decision cannot be the subject matter of the Commission of Inquiry. Since, without the participation of the Petitioner's husband, the Commission has inquired into the matter and made certain findings, he argued that it is in violation of the rules of natural justice.

On the other hand, Mr. Yuwin Muthugama argued for the 10<sup>th</sup> Respondent that there is a delay in prosecuting this Application from the finding and the making of this Application.

Second argument is that the Commission has not gone out of its mandate since even the Attorney General's conduct can be inquired into by a Commission of Inquiry.

The third argument is that no immunity can be attributed to the Attorney General or its officers from the purview of the Commission of Inquiry.

The learned President's Council, Faisz Musthapa, argued for and on behalf of the 3<sup>rd</sup> Respondent that the impugned document, **P8**, is not a certified copy, and therefore, Rule 3 applies. He further argued that according to **P12**, the Petitioner's husband had been appointed by the Secretary to Prime Minister at that time to serve in the Anti-Corruption Committee Secretariat on secondment

on payment of certain allowance, 50% of the basic salary. Therefore, it does not come within the Attorney General's duty or responsibility.

Thirdly, Mr. Musthapa argued that **P11** and **P12** should be read together or should be considered together to understand the appointment.

The Petitioner's husband has been summoned. However, he has not been permitted to participate which is reflected by **P7**; therefore, there was no violation of rules of natural justice.

On the other hand, Mr. Manoharan Jayasinghe contended that the Petitioner has gone and served in the Anti-Corruption Committee when the Attorney General nominated him at the request of the said committee to nominate a representative of the Attorney General to serve on the committee, to advise the committee and on that basis the Petitioner's husband has served in the committee, and therefore, he has gone as an Attorney General's nominee despite the fact that there is an appointment by the said committee marked as **P12**.

Further, Mr. Jayasinghe argued that such a member of the Attorney General's Department cannot be victimised for performing or discharging his official duties based on discharge of such duties in the course of the functioning of the Anti-Corruption Committee on the basis that certain people were politically victimised against the allegations were inquired into and looked into by the committee, and later the steps were taken to prosecute them. Therefore Mr. Jayasinghe contended that it affects the rule of law of the country; if whenever an officer of the State is bound by law and his professional ethics to perform and discharge his duties under the law is subjected to the purview of the Commission appointed by the Act, No. 17 of 1948. There is a direct conflict of the functions of institutions; as such that affects not only Rule of Law but also all other entire legal system.

### **The Petitioner's position**

The Petitioner asserts that she is the wife of the late Mr. Mudalige; in proof thereof, she has annexed the marriage certificate marked as **P1** to the Petition. She further asserts that the late Mr. Mudalige had joined the Attorney General's Department as a probationary State Counsel, and thereafter rose through the ranks and by the time he untimely parted this world, he was the Senior Deputy Solicitor General; in proof thereof, she has annexed the documents marked as **P3(a)** to **P3(e)(ii)** to the Petition.

In addition to that, the Petitioner asserts that the then-President, Gotabaya Rajapakse, on 2020, exercised his powers given under the Commissions of Inquiry Act, No. 17 of 1948, appointed the 1<sup>st</sup> to 3<sup>rd</sup> Respondents as commissioners to inquire into the allegations of mainly political victimisation of government, corporations, and officers of armed force and police by the regime that governed by the country between 8<sup>th</sup> January 2015 to 19<sup>th</sup> November 2019; the gazetted warrant of the commission is annexed in two parts, marked as **P5** and **P6** of the Petition.

The Petitioner further asserts that during the regime of Government, which was elected in August of 2015, known as the "Yahapalana Government" under the presidency of Maithreepala Sirisena, pursuant to a Cabinet decision taken, a new investigating police unit called "Anti- Corruption Investigating Committee" (ACC) was set up to investigate into the matters of allegations of bribery and corruption and other malpractices that had taken place under the previous regime that was enabled prior to the 8<sup>th</sup> of January 2015.

It is her position that at the request of the Secretary to the Prime Minister, the then-Attorney General nominated Mr. Mudalige, by letter dated 11.03.2015, marked as **P11** annexed to the Petition.

Thereafter, according to the Petitioner, the Commission where the 1<sup>st</sup> to 3<sup>rd</sup> Respondents were appointed to, having inquired into the allegations made by certain people, particularly the 13<sup>th</sup> Respondent, Mr. Thilakasiri, had summoned the Petitioner's husband to come before the Commission. It is her position that in response to the said summons, the then-Honourable Attorney General, has informed the Commission by a letter marked and annexed to the Petition as **P7**, that Mr. Mudalige had been nominated by the then-Honourable Attorney General on secondment to function as the advisor to the said ACC set up pursuant to a Cabinet decision, and thereafter, on the investigations conducted by the said Committee and on the material found after investigations, certain people had been charged and indicted before the relevant fora including the 13<sup>th</sup> Respondent who had made an allegation against Mr. Mudalige attributing that he had personally and intentionally vindictively victimised the said Thilakasiri.

Nevertheless, it was position of the Honourable Attorney General that was taken up in the said letter that Mr. Mudalige happened to only be a legal advisor and not an investigating officer; in addition to that, Mr. Mudalige was the one assigned to prosecute the indictment before the High Court. The said Thilakasiri had made the said allegations before the Commission who was appointed by the documents marked as **P5** and **P6** to inquire into the matter, solely for the purpose of scuttling the proceedings before the High Court; therefore, the Attorney General only assisted the ACC and the High Court as duty-bound law officers of the State, and thus, is not personally responsible for any allegations levelled against him. As such, he had declined to send Mr. Mudalige as there is no personal allegations against him in such terms, and that nothing is found against him neither as being cited as a respondent against the Commission; the said letter is marked and annexed to the Petition as **P7**.

Nevertheless, it is the complaint of the Petitioner that the Commission has proceeded to inquire into the said allegations of the said Mr. Thilakasiri (the 13<sup>th</sup> Respondent), and in the final report, had come to certain findings against Mr. Mudalige. However, it is the position of the Petitioner that, not only against the said Mr. Mudalige, but the said Commission had come to findings against so many other investigating officers and most of them have obtained separate judgements, particularly writs in the nature of *Certiorari*, quashing the said findings against them; some of such judgements are marked as **P10** annexed to the Petition.

Therefore, the Petitioner seeks *inter alia* the following relief against the findings regarding her husband, who was an honourable and respected member of the legal profession and a dutiful and loyal officer of the Honourable Attorney General's Department, and above all, a true professional and duty-bound husband.

*“(b) A Writ of Certiorari to quash the findings, decisions and recommendations of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents as contained in the Report marked ‘P8’ in respect of the late Mr. Thusith Mudalige;*

*(c) A Writ of Certiorari to quash the findings, decisions and recommendations the 1<sup>st</sup> – 3<sup>rd</sup> Respondents as contained in the Report marked ‘P8’ in respect of the late Mr. Thusith Mudalige in respect of the duties carried out by him as an advisor to the Anti-Corruption Committee, on the nomination of the Hon. Attorney General;*

*(d) A Writ of Certiorari to quash the findings, decisions and recommendations of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents as contained in the Report marked ‘P8’ in respect of the late Mr. Thusith Mudalige in respect of complaints bearing Numbers 205/2020, 289-290/2020, 316/2020, 319/2020, 1964/2020, 414/2020;*

*(g) A Writ of Certiorari quashing the decisions of the Cabinet of Ministers dated 18.01.2021 marked 'P9' to the Petition in respect of the late Mr. Thusith Mudalige;”*

## **Objections**

The 3<sup>rd</sup> Respondent have stated that, while admitting that they were appointed by the Head of the State in terms of the Commissions of Inquiry Act, No. 17 of 1948 (as amended), they were required to investigate into the allegations that the Commission to Investigate Allegations of Bribery or Corruption (hereinafter referred to as “CIABOC”), the Financial Crimes Investigation Division (hereinafter referred to as “FCID”), the Criminal Investigation Department (hereinafter referred to as “CID”), and the Special Investigation Unit (hereinafter referred to as “SIU”) were influenced when investigating various matters and allegations during the relevant time period.

Further, it is argued that they were also required to investigate whether those institutions were influenced, obstructed, or prevented in any manner, thereby resulting in loss, damage, injury, or detriment, either directly or indirectly, to any person or persons who made complaints to the Commission where he was a member.

Accordingly, while the rest of the allegations made by the Petitioner have been denied, the 3<sup>rd</sup> Respondent nevertheless admitted that, upon the investigations conducted, they had arrived at certain findings.

## **Issues arising for my consideration**

In view of the assertion made by the Petitioner and the objections taken up by the Respondents, in addition to the arguments advanced by the counsel before me orally as well as by way of written submissions, it is my view that the following questions arise for my consideration;

- (i) Whether the conduct of any officer of the Attorney General's Department, or the Attorney General in general, is a subject of warrant of **P5** and **P6**
- (ii) If the above question is answered in the negative
- (iii) Whether it is *ultra vires* if the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have come to some final conclusion and made some recommendations after such conclusion against the Attorney General or any officer of the Attorney General's Department
- (iv) Whether the Respondents have failed to follow the rules of natural justice in coming to their conclusions or making any recommendations
- (v) Whether the conclusions arrived at by the Respondents and their recommendations are without any value or do not affect any person's rights, thereby proving whether no writ lies in this Application

### **Mandate of the Respondents**

It is common ground that the documents marked as **P5** and **P6** contain the mandate by which the 1<sup>st</sup> to 3<sup>rd</sup> Respondents were appointed as the commissioners under the Act No. 17 of 1948.

On a perusal of the said two documents, I found that the said commissioners have been appointed in terms of Act No. 17 of 1948 to inquire into the allegations of political victimisation during the time period concerned (8<sup>th</sup> January 2015 to 19<sup>th</sup> November 2019), under the previous government popularly known as the 'Yahalapana Government', under whose regime the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) was activated under the new Director General. All members thereof were responsible for any such political victimisation of any officers concerned.

The FCID was also setup, appointed, and functions under the said Government as being responsible for any such political victimisation in carrying out their duties, activities and functions.

The SIU was setup, appointed, and functions and carries out its duties under the said Government while also being responsible for any political victimisation.

The CID was also responsible for any political victimisation of any officers concerned.

However, it is quite interesting to note, as argued by the Counsel for the Petitioner, that neither the officers of the Honourable Attorney General's Department nor the Honourable Attorney General himself (whoever who functioned during that time) as well as any officer seconded from the Department to advise or was attached to the said ACC is specially mentioned in the mandate. As such, as clearly argued by the Counsel for the Petitioner, it is my view that neither the Honourable Attorney General himself nor any officer of the Attorney General's Department on secondment was attached to any of the above-mentioned institutions or advised any of them in the capacity of the Attorney General, were subject to any scrutiny by the Commission.

In fact, on a perusal of the Act No. 17 of 1948, it is very clear that if the appointing authority considers that such conduct can be scrutinised or be subjected to the Commission of Inquiry, it could have been done by the mandate itself, which the appointing authority failed to do.

Therefore, it is my view that if the commissioners have acted in the manner complained of by the Petitioner, that it had gone into the conduct of the Attorney General or his officers, is a matter which is outside the purview of **P5** and **P6**; thus, if the members of the Commission have come to any findings and conclusions based on such findings, as well as if any recommendations exists against any such officer of the Attorney General's Department or the Attorney General himself, then it is my view that such inquiry is *ultra vires*.

Having held so, now I will consider the second matter on whether the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have gone on a voyage of discovery against the officers of the Attorney General's Department, or the Attorney General himself, to come to any findings or make any recommendations.

### **Role of the Petitioner's husband**

On a perusal of the document marked as **P8**, the final report, it is very clear that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, as the commissioners appointed by **P5** and **P6**, have made recommendations against the Petitioner's husband, who is the late Mr. Thusith Mudalige, DSG, who had been assigned on secondment to the Anti-Corruption Committee for the purpose of advising the Anti-Corruption Committee on legal matters. The said officer, Mr. Mudalige, had been so assigned as part of normal duties of the Attorney General's Department at the request made to the Attorney General's Department by the Secretary to the Commission.

As stated above, Mr. Mudalige has been nominated to serve the ACC by the then-Attorney General as reflected in the document marked as **P11**, dated 11.03.2015. By the document marked as **P12**, dated 16.03.2015, the senior State Counsel in-charge of Administration of the Attorney General's Department had informed the Secretary to the Prime Minister that Mr. Kapila Waidyaratne, P.C., and Mr. Thusith Mudalige were nominated to serve on the said Anti-Corruption Committee. For further clarity, I reproduce the same;

*“Assignment of the Task of Adviser of the Anti Corruption Committee Secretariat:*

*I am pleased to assign you to the task of Adviser of the Anti-Corruption Committee Secretariat (ACCS) which has been established under the Cabinet Decision dated 11.02.2015.*

*02. This will be a temporary assignment for a period of six months on part time basis.*

*03. Your assignment will be effective from 25.02.2015.*

*04. This assignment carries an allowance which is 50% of the basic salary.*

*05. You will be subjected to the provision of Establishments Code, the Financial Regulations, departmental Orders and any other regulations or orders issued from time to time by the Government.*

*06. Please acknowledge receipt of this letter and state whether you accept the above assignment on the terms and conditions stated herein.”*

Thereafter, on 16.06.2015, the Secretary of the Ministry of Justice has written to the Attorney General, to release Mr. Mudalige from the normal work of the Attorney General's Department. By 30.06.2015, the then-Administrative Officer of the Attorney General's Department wrote to the Secretary of the Ministry of Justice stating that Mr. Mudalige has not been released from his normal duties; therefore, he continues to work as a State Counsel working under the Attorney General's Department. Thereafter, the Secretary to the Prime Minister has written to Mr. Mudalige by the letter dated 27.07.2015, assigning his work and extension of his work period as the advisor to the said ACC; the same is followed by several other letters which are filed as part of the record.

Therefore, the letter marked as **P11** establishes that Mr. Mudalige has been nominated along with Mr. Kapila Waidyaratne to serve on the ACC as officers of the Attorney General's Department.

Accordingly, the Attorney General has released Mr. Mudalige, and he has been working on the said Committee in the capacity of a legal advisor, and to guide the said ACC setup under the regime of the Yahalapana Government to ensure that they work under the purview of the law and conduct their investigations, inquiries, and find material against anybody against whom there had been

allegations and complaints, and if the material is sufficient, to further investigate within the law and bring them before the law.

As such, it is very clear that the said officer, Mr. Mudalige, had functioned the same duties that the Attorney General would normally carry out as the Chief Legal Advisor, who is empowered by law to exercise enormous powers in the prosecutorial capacity from the time the second written Constitution of 1801 was introduced and promulgated, by which the very Supreme Court of this country was established. Therefore, the Attorney General, then known as Advocate Fiscal, is an integral part of the prosecutorial system of this country, under whose advise some functionaries under the Criminal Law exercise and carry on, particularly when there is crime committed against the society or any individual.

As such, Mr. Mudalige's functioned only as an officer of the Attorney General, and not in any other capacity; therefore, it is my view that without a special mandate been included in **P5** and **P6**, the Attorney General's conduct or any other officer who worked under him or was attached to the Attorney General's Department who advised the said committee cannot be investigated into by the said Commission.

When the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, as members of the Commission appointed by **P5** and **P6**, undertook to inquire into any allegations against the Attorney General or his officers, their conduct and the role played by them according to law cannot be questioned in any manner, because that would affect the prosecutorial system of this country, which has been entrusted with duties under the criminal justice system.

## **The Respondents' conduct is against the rules of natural justice**

The next question for my consideration is whether the findings and recommendations made by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents against the late Mr. Mudalige, DSG, is irrational, not mandated, and therefore, *ultra vires* and in violation of the rules of natural justice.

As mentioned above, Mr. Mudalige's attachment to advise the said special units created and setup and appointed under the Yahapalana Government, cannot be questioned without been specifically mentioned in the mandate **P5** or **P6**. Such inquiry or investigation by the Commission appointed in that behalf of Act No. 17 of 1948 is *ultra vires*, and since the Respondents have gone on a voyage of discovery in that behalf is also *ultra vires* and irrational.

Before the Commission, a gentleman named Thilakasiri (the 13<sup>th</sup> Respondent) has made a complaint alleging that the Petitioner's husband had been involved in advising the ACC, and was responsible for implicating the 13<sup>th</sup> Respondent which resulted in an indictment, at that time pending against him before the High Court.

However, it must be noted that Thilakasiri has been indicted before the High Court not by the Petitioner's husband, but may have been on the advice of the Petitioner's husband the evidence must have been collected or the evidence must have been available against him, and then on the evidence available, the Attorney General had decided to indict him. Therefore, other than the legal advice and guidance given by the Petitioner's husband, there is no allegation that he went on concocting evidence or fabricating evidence against Thilakasiri; thus, the finding against any officer of the Attorney General's Department, particularly the Petitioner's husband, is untenable.

If a commission inquires into the conduct of the Attorney General or any officers thereof, who play the role of prosecutorial duties for and on behalf of the nation, that itself is a part of the

criminal justice system, and therefore, an indictment is also a culmination of the process of findings evidence against an accused person as result of a commission of an offence. Therefore, indicting a person on the material evidence available against him is a part of the criminal justice system. As such, the Attorney General or his officers play an integral part of such criminal justice system which is part of the judicial system. Therefore, when an indictment is served before a High Court, then the High Court has to finally decide upon the material evidence placed before it and not by any other person.

As such, if the Commission inquires into such matters it will affect the Judicial power of the people which is stipulated in Articles 3 and 4 of the 1978 Constitution, where the sovereign people have accepted the Parliament as the Legislature to exercise such sovereign people's legislative power. Such sovereign people exercise its judicial power by the Parliament through the courts of this country, and therefore, once a matter is indicted or instituted before a court, nobody can prevent such function of a judicial officer, except the due process of law.

In that case, once an indictment is served before a High Court on a person accused, it is the duty of the judge to carry on with the trial and finally come to a conclusion by deciding on the rights and duties of such an accused because such indictment may involve matters which may have already affected another person's rights or the rights of the society at large. Therefore, it is the judge who finally exercises the judicial power of the people; thus, if a person thwarts or prevents such judicial functions, acting under a commission and appointed in terms of the Act No. 17 of 1948, he scuttles such proceedings, and thereby violates the Constitution and the sovereign right of the people, which cannot be condoned.

The Attorney General has indicted such a person because the law empowers him to indict such a person if the material is available and sufficient against such a person. Additionally, the Attorney

General is under a duty cast upon him by the Constitution and other relevant laws including the Criminal Code of Procedure Act, to indict such a person when there is sufficient material available against such a person. Therefore, the Attorney General had decided to serve the indictment against the 13<sup>th</sup> Respondent before a High Court on the material collected in the course of investigations by the said units specially appointed under the Yahapalana Government.

As such, no commission which has been appointed outside the purview of the functions of a judicial officer, cannot prevent or thwart the functions of the Judiciary of this country which will affect the judicial power of the people, and therefore, their sovereign rights as well.

On the other hand, any relevant court can set aside any recommendation or decision or conclusion made by such a person or commission appointed in terms of Act No. 17 of 1948.

As it is contended on behalf of the Petitioner that the recommendations made on the complaints made by the 13<sup>th</sup> Respondent to the 1<sup>st</sup> to 3<sup>rd</sup> Respondents in the course of carrying out its investigations as commissioners, though summons was supposed to have been sent to the Petitioner's husband, he had never been informed by such summons as to why he was called before the Commission to give any answer or respondent to such summons. If there is any case made out against the Petitioner's husband, it should have been sent along with the summons. However, there is no such intimations sent to the Petitioner's husband.

In response to such summons, the Attorney General himself, has personally written to the Commission informing them that he cannot send any of his officers since there is no mandate for the Commission to look into the conduct of any officer of the Attorney General's Department. In addition to that, the Attorney General has taken so many other objections against the summoning of Mr. Mudalige before the Commission since there is no proper complaint made against him or

no such complaint is informed or appraised of by the Commissioner to Mr. Mudalige or the Attorney General.

As such, there is a clear violation of the rules of natural justice by the Commission in summoning the late Mr. Mudalige. In addition to that, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have gone on a voyage of discovery against Mr. Mudalige. Therefore, it is my view that in those circumstances, the writs lie against the Respondents in this Application.

Furthermore, since there are recommendations to indict Mr. Mudalige and withdraw certain indictments served against the 13<sup>th</sup> Respondent to this Application.

Though it was argued for and on behalf of the 1<sup>st</sup> Respondent that no findings or recommendations affect the Petitioner's late husband, it is my view that the recommendations made by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents in the final report is a glaring matter that reflects on the character, reputation, and fame that he had not only as an officer of the Attorney General's Department, or as a professional Attorney-at-Law, but also as a human being.

Therefore, such recommendations without any findings and made without any mandate is liable to the writs as sought by the Petitioner in this Application.

### **The dark history of Commissions of Inquiry**

In the annals of the history of Sri Lanka, Commissions of Inquiry and Presidential Commissions of Inquiry have been used by Politicians to achieve their ulterior motives,<sup>1</sup> and also to sling mud at political opponents as well as innocent people. This was manifestly clear when under the Special

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<sup>1</sup> *Bandaranaike v. Weeraratne* [1978-79] 2 Sri L.R. 412, [1981] 1 Sri L.R. 10, Rational behind the 1<sup>st</sup> amendment to the Constitution of 1978 Determination of Constitutional Bill Volume I, Dr. Colvin R de Silva 'Assault on the Judicial Independence' article written in November 1978 appeared in Sri Lanka's New Capitalism and The Erosion On Democracy 1977-88 edited by Batty Weerakoon.

Presidential Commission mud was slung at some Supreme Court Judges without impeaching according to law, and Dr. Colvin R. De Silva also commented on that in the following manner in one of his articles.

*"The Judiciary of this country, even under British imperialism, has been a protected preserve into which even justified and permissible criticism has been permitted to intrude only under conditions of strict legal and conventional control. This is part of the British tradition and, in Sri Lanka, an inheritance from that tradition. Not everything that is British is bad. On the contrary there is much that is British that is good. One strand in that goodness is the attitude to the judiciary which has been developed in the interests of judicial independence.*

*The attitude is distilled into the aphorism that there have been bad judges, there will be bad judges, but there never are bad judges. There of course are bad judges; otherwise, there could not have been any bad judges. The point of the aphorism is that there are certain definite ways of investigating such badness, and of bringing it home to the wrongdoer and punishing him, without undue damage to the courts as an institution.*

***There must have been many who looked askance at the startling headline on the front page of the Government -controlled newspaper, the 'Ceylon Daily News,' of Friday, August 11, 1978, which read: Justice Pathirana Acted Illegally. Below, with no less prominence, was the double headline: 'Felix's political stooge in Supreme Court - Counsel. Justice Pathirana was a functioning judge of the Supreme Court at the time.***

*We know of no precedent in our country to cover or match this occurrence and this situation. According to the news note below, the headlines are quotes from the Address of*

*'Counsel for State' at the Presidential Commission. The event is unique in our history and will go down to history. It should not pass into history unnoted by contemporary publicists and without comment within the limits set by law, inter alia, in relation to the Presidential Commissions of Inquiry." (Emphasis is mine)*

The Article so written by Dr. Colvin R. De Silva an irony of the history because the Special Presidential Commission Law was enacted under the fragile framework of the 1972 Constitution. It was brainchild of Dr. Colvin R. De Silva to make it so fragile without having at least the essence of Constitutionalism enshrined in the Constitutional provisions.<sup>2</sup> Therefore, the Government elected under the very same 1972 Constitution in 1977 made it a point to enact Special Presidential Commission of Inquiry Law No. 07 of 1978 to sling-mud at people including Supreme Court Judges.<sup>3</sup>

In addition to that, mud-slinging campaign abuse of process of Commission of Inquiry is commented by the Supreme Court in several Judgments. One such Judgment is the Judgment of *B. Sirisena Cooray v. Tissa Dias Bandaranayake and two others*<sup>4</sup> where Dheeraratne, J had to say this;

*"In a democracy, the commissions cannot be permitted to be a law unto themselves and operate outside the ambit of the Rule of Law. As observed by G.P.S. de Silva CJ in*

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<sup>2</sup> Nihal Jayawickrama, 'Reflection On the Making and Content of The 1972 Constitution: An Insider's Perspective', in Asanga Welikala (ed), *The Sri Lankan Republic At 40: Reflection On Constitutional History* (Centre for Policy Alternative 2012), 43-124; Rohan Edrisinha 'Constitutions without Constitutionalism; Sri Lanka's crisis of constitutional first principles, appeared in the felicitation book of entitled 'Human Rights, and the rule of law, essays in honour of Deshamanya H L De Silva President's Counsel edited by ARB Amarasinghe and S S Wijeratne.

<sup>3</sup> Dr. Colvin R. De Silva, "Victimization of Judges", in Batty Weerakoon (ed), *Sri Lanka's New Capitalism and the Erosion of Democracy 1977-1988*, 83 <ISBN-955-592-002-8> .

<sup>4</sup> *Sirisena Cooray v. Tissa Dias Bandaranayake and two others* [1999] 1 Sri L.R. 1; *Wijeyapala Mendis v. P. R. P. Perera and others* [1999] 2 Sri L.R. 110.

*Premachandra v. Major Montague Jayawickrema and another "...at 102 Our Constitution and the system of government are founded on the Rule of Law; and to prevent the erosion of that foundation is the primary function of an independent judiciary."*

Commission of Inquiry appointed under the Commission of Inquiry Act No. 17 of 1948 can be conducted without following any Rules of Evidence or Evidence Ordinance or any particular procedure as provided for in Section 07 of the Commission of Inquiry Act, which read thus;

*"07. (1) A commission appointed under this Act shall have the following powers: -*

*(a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the commission may think it necessary or desirable to procure or examine;*

*(b) to require the evidence (whether written or oral) of any witness to be given on oath or affirmation, such oath or affirmation to be that which could be required of the witness if he were giving evidence in a court of law, and to administer or cause to be administered by an officer authorized in that behalf by the commission an oath or affirmation to every such witness*

*(bb) to make an application to any Court of law or any tribunal to obtain certified copies of any proceedings of any case, any document or any certified copy of such document or of any other material filed or recorded in such court of law or tribunal;*

*(bbb) to require any person to produce any document, a certified copy thereof or any other material which is in his possession or custody;*

*(bbbb) to require any person to provide to the Commission any information in writing which he is likely to possess;"*

*(c) to summon any person residing in Sri Lanka to attend any meeting of the commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession;*

*(d) notwithstanding any of the provisions of the Evidence Ordinance, to admit any evidence, whether written or a', which might be inadmissible in civil or criminal proceedings;  
(Emphasis is mine)*

*(e) subject to any direction contained in the warrant-*

*I. To admit or exclude the public from the inquiry or any part thereof;*

*II. To admit or exclude the press from the inquiry or any part thereof;*

*(f) to recommend that any person whose conduct is the subject of inquiry under this Act or who is in any way implicated or concerned in the matter under inquiry be awarded such sum of money as, in the opinion of the commission, may have been reasonably incurred by such person as costs and expenses in connexion with the inquiry. In this paragraph, "costs and expenses" includes the costs of representation by attorney-at-law, and travelling and other expenses incidental to the inquiry or consequential upon the attendance of such person at the inquiry.*

*(2) Where any report is rendered in terms of any Warrant issued to a Commission appointed under this Act, such Commission may make recommendations to the relevant disciplinary authority with regard to the action that it considers necessary to be taken in*

*respect of any person whose conduct is the subject of the inquiry or investigation or who is in any way implicated or concerned in the matter which such Commission was warranted to investigate or inquire into...”*

## **Conclusion**

For the reasons adumbrated above, it is my view that the *Writ of Certiorari* lies to quash the document marked **P8**, and particularly the findings against the husband of the Petitioner, late Mr. Thusith Mudalige, the Senior Deputy Solicitor General, in addition to that, quash the recommendations which was made by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, which is contained in the same document **P8**. Further, I grant reliefs as prayed for in prayers (b), (c), (d) and (g) of the Petition, without cost.

**JUDGE OF THE COURT OF APPEAL**