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

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

Case No. **CA WRT 637-2024**

Prabath J Malavige
No. 1, 18th Lane, Aluthmawatha,
Colombo 15.

PETITIONER

Vs.

1. Hon. H.M. Vijitha Herath,
   Minister of Transport, Highways, Ports and Civil Aviation,
   Ministry of Transport, Highways, Ports and Civil Aviation,
   Ministry of Ports, Shipping and Civil Aviation Division,
   No. 19, Chaithya Road, Colombo 01.

1A Hon. Bimal Rathnayake
   Minister of Transport, Highways, Ports and Civil Aviation,
   Ministry of Transport, Highways, Ports and Civil Aviation,
   Ministry of Ports, Shipping and Civil Aviation Division,

No. 19, Chaithya Road, Colombo 01.

1A ADDED RESPONDENT

1B Hon. Anura Karunathilaka
Minister of Ports & Civil Aviation
Ministry of Ports and Civil Aviation,
Ministry of Ports, Shipping and Civil Aviation Division,
No. 19, Chaithya Road, Colombo 01.

1B ADDED RESPONDENT

2. K.D.S.Ruwanchandra
Secretary,
Ministry of Transport, Highways, Ports and Civil Aviation,
Ministry of Ports, Shipping and Civil Aviation Division,
No. 19, Chaithya Road, Colombo 01.

2A Senior Prof. Kapila C.K. Perera
Secretary,
Ministry of Transport, Highways, Ports and Civil Aviation,
Ministry of Ports, Shipping and Civil Aviation Division,
No. 19, Chaithya Road, Colombo 01.

2A ADDED RESPONDENT

2B Mr. W.W.S. Mangala
Secretary,
Ministry of Ports and Civil Aviation,

Ministry of Ports, Shipping and Civil Aviation Division,
No. 19, Chaithya Road, Colombo 01.

2B ADDED RESPONDENT

3. Sri Lanka Ports Authority,
   No. 19, Chaithya Road, Colombo 01.

4. Admiral Sirimewan Sarathchandra Ranasinghe
   (Rtd)
   Chairman,
   Sri Lanka Ports Authority,
   No. 19, Chaithya Road, Colombo 01.

5. Herath Jayawardena,
   Vice – Chairman

6. P.B.S.C. Nonis,
   Director

7. P.A.S. Athula Kumara,
   Director

7A. R.A. Damitha Kumari Rathnayake,
   Director

8. N.A.A.P.S. Nissanka,
   Director

9. E.M.S.B. Jayasundara,
   Director

10. Neil R. Hewathanthri,
Director

10A. Upul Jayathissa,
Director

11. H.D. Dewendra,
Director

11A. U.L. Anura Bandara,
Director

12. P.S.K. Watawala,
Director

4th to the 12th Respondents
All of

Sri Lanka Ports Authority,
No. 19, Chaithya Road,
Colombo 01.

13. T.K.G.L. Hemachandra,
Purported Managing Director,
Sri Lanka Ports Authority,
No. 19, Chaithya Road,
Colombo 01.

14. R.M.A.L. Rathnayake,
Chairman,
Election Commission,

15. M.A.P.C. Perera,
Member,

Election Commission,

16. Ameer Faaiz,
Member,
Election Commission,

17. Anushya Shanmuganathan,
Member,
Election Commission,

18. Prof. Lakshman Dissanayake,
Member,
Election Commission,

14th to the 18th Respondents,
All of
Election Secretariat,
P.O. Box 02, Sarana Mawatha,
Rajagiriya.

RESPONDENTS

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**

: **Hon. K. Priyantha Fernando, J. (CA)**

Counsel : Sanjeeva Jayawardena, PC with Lakmini Varusavithane, AAL for the Petitioner instructed by Amila Kumara.

Kuvera de Zoysa, PC with Sajana de Zoysa, AAL for the 1st to 4th Intervenient – Petitioners instructed by Sanjay Fonseka, AAL

Saliya Pieris, PC with Farhad Jiffry, AAL and Dhimarsha Marso, AAL instructed by Manjula Balasooriya, AAL for the Petitioners seeking intervention.

Vikum de Abrew, PC, ASG with Prabhashanee Jayasekera, SC for the 1st – 12th Respondents.

Chamara Nanayakkarawasam, AAL with Apoorva Nanayakkara, AAL and Ridma Senarath, AAL for the 13th Respondent.

Written Submissions on : 17.02.2026 for the 1B & 2B Respondents.

17.02.2026 for the 3rd to 12th Respondents.

Supported on : 06.02.2026

Decided on : 09.03.2026

K. Priyantha Fernando, J. (CA)

1. Two sets of Intervenient-Petitioners have filed before this Court seeking to intervene and be added as Respondents in the matter at hand. The Staff Officers 'Association of Sri Lanka Port's Authority (hereinafter sometimes referred to as the first set of Intervenient Petitioners) sought to intervene via Petition dated 14th October 2024, while the members of the Port Join Trade Union Alliance (hereinafter sometimes referred to as the second set of Intervenient Petitioners or the 1st to 4th Intervenient Petitioners) sought to intervene via Petition dated 04.12.2024. First, this Court has considered the application made by the first set of Intervenient Petitioners, the Staff Officer's Association of the SLPA. Furthermore, it is pertinent to note that the first set of Intervenient Petitioners (SOA), on28th October 2024, filed a Fundamental Rights Application - SC FR Application No. 299/2024 in respect of the same subject matter.

2. The Intervenient Petitioners, (Staff Officers' Association) by their Petition have prayed to allow them to intervene; add them as party Respondents and to permit them to file objections and to permit them to be heard.They have submitted that they seek intervention in view of the critical impact of the matters and the effect that would be caused to them by the relief sought by the Petitioner as the matters impugned are indivisibly and inextricably linked to their interests.

3. The Staff Officers Association of Sri Lanka Ports Authority (SOA) represents the majority of the executive officers within the Sri Lanka Ports Authority (SLPA).They are compelled to raise concerns regarding the recent appointment of the new Managing

Director, which they believe is inconsistent with the legal framework established by the SLPA Act No. 51 of 1979 as amended.

4. They state that they have a direct and substantial interest in the subject matter and any decision in the absence of their input may have a critical impact on the rights, privileges, and interests of the executive officers whom SOA represents. It was submitted that intervention is necessary to ensure that the Court is fully apprised of the potential implications of the disputed appointment on the SLPA's administration, operational efficiency, and governance standards; such submissions will assist the Court in evaluating the matter comprehensively, consistent with principles of justice and institutional accountability. The intervention is intended solely for the purpose of making submissions on matters of law and fact relevant to the governance and administration of the SLPA. The intervention will ensure that the interests of the executive officers, whose professional conduct and commitment underpin the SLPA's functioning are adequately represented before the Court. Intervention at this stage will not prejudice any party to the proceedings and will instead serve the interests of justice. They seek only to make submissions in support of lawful governance, merit-based appointments, and adherence to statutory and procedural requirements as envisaged under the Act. The intervention will ensure that the Court is presented with a complete and balanced understanding of the institutional implications of the contested appointment.

5. It was submitted that the impugned irregular appointment of the new MD has a direct and substantial impact on the SOA, as the Association represents a significant portion of the executive officers within the SLPA. Any appointment that disregards established

merit-based principles and procedural requirements threatens the Association's ability to safeguard the professional interests, rights and privileges of its members. SOA's members rely on transparent and lawful appointment practices to maintain morale, motivation, and trust in the governance structures of the SLPA. The appointment of an individual lacking requisite Top-Level Management experience undermines confidence in institutional decision making and creates uncertainty regarding career progression, seniority, and the enforcement of established promotional guidelines which in turn, could weaken the cohesion and collective commitment of the executive officers, ultimately affecting the Association's ability to represent its members effectively.

OBJECTIONS TO THE INTERVENTION:

6. 1B, 2B, and 3rd to 12th Respondents have raised following objections:

   (a) The Court of Appeal (Appellate Procedure) Rules, 1990 do not provide for intervention in writ applications.

   (b) This application can be effectively and completely determined without the intervenient-petitioner as they are neither a necessary nor a proper party.

   (c) Allowing the application will only lead to prolongation of the present proceedings.

   (d) Allowing the application will open floodgate for similar applications.

   (e) The intervenient-petitioner is guilty of *laches*.

   (f) They have not come with clean hands.

   (g) This application for intervention is an abuse of process.

7. The attention of the Court was drawn to the decision of a Divisional Bench of the Court of Appeal –*Chithra Weerakoon and Another v. Hon. Jeewan Kumarathunga Minister of Lands and others* CA Writ No. 586/2007 decided on 29.10.2025 on the issue of whether parties are entitled to intervene in Writ Applications in the absence of any provisions in the Rules of the Court of Appeal.

8. It was contended that while, the intervention application in Chithra Weerakoon was eventually allowed in appeal by the Supreme Court (vide SC Appeal 166/2012 decided on 17.01.2024), this was only on a *pro-forma* basis as the counsel for the Petitioner-Respondent consented to the intervention with a view of facilitating the speedy disposal of the substantive Writ Application. Since the Supreme Court in SC Appeal 166/2012 did not go into the merits, Weerakoon continues to be binding authority.

9. The main objection is that the Intervenient is not a necessary party. In CA/WRT/403/2013 decided on 11.12.2015, it was held as follows: "*When considering the circumstances under which the intervenient-Petitioner has come before this Court, I observe that the above decisions of this Court as well as by the Supreme Court permits me to conclude that the intervenient Petitioner in the present case is* ***necessary party who can assist this court to arrive at a correct decision****. I therefore overrule the objections of the Petitioners-Respondents and allow the interventions of the Intervenient-Petitioner".*

10. It was the position of the Respondents with regard to the main issue that in terms of section 13(1) of the Ports Authority Act, appointments to the post of Managing Director is made by the Minister; the law does not require that this appointment be made from among the officers of the SLPA; in other words, the post of MD is not a part of any promotional hierarchy or career progression available as of right to officers of SLPA; consequently, the core issue namely, **legality of the removal of the Petitioner from the post of MD** of the SLPA, **does not have a necessary bearing on the rights and/or legitimate expectations** of the Intervenient-Petitioner's membership.

11. It is pertinent to note that on 28th October 2024, the Intervenient-Petitioner filed a Fundamental Rights Application - SC FR Application No. 299/2024 alleging that the removal of the Petitioner from the post of MD of the SLPA is violation of its rights under Articles 12(1), 12(2) and 14(1)(g). It has been instituted after the present Writ Application and the Intervenient-Petitioner has been well aware of this Application at the time it instituted FR Application. On or about **01.04.2025**, they have withdrawn the FR Application on the basis that the present application is pending before this Court. The Intervenient Petitioner, having voluntarily let go of its opportunity to vindicate its rights, now seek to secure another bite at the cherry by pursuing the present application for intervention. It is seen that they have withdrawn the FR Application even prior to the intervention petition being considered by this Court, i.e., at a time when it was not clear if the intervenient-Petitioner will ever be permitted to intervene in the present Application. It was contended that this timing evidences the fact that the Intervenient-Petitioner was comfortable with the possibility of having the core issue decided without their involvement.

12. Nevertheless, the second set of Intervenient Petitioners relating to intervention was filed by four petitioners who are all members of the Port Join Trade Union Alliance of the SLPA.The learned Presidents Counsel appearing for them has drawn the attention of this Court to the following case law:

(1) In *Government School Dental Therapist Association v. Director General of Health Services and Others* (CA Writ Application 861/93) CA minutes dated 25th July 1994, wherein Court allowed the intervention sought on the following basis: "*Each of the Intervenient Petitioners in the present case cannot be said to be a different 'meddlesome busybody' or a 'meddlesome interloper' who do not have a sufficient interest in the pending application. I would therefore adopt the liberal rules in regard to the standing of a party* ***entitled to seek a remedy*** *to the case of an intervenient* ***who similarly has a sufficient interest in the subject matter*** *of a pending writ application, and on that basis to permit the intervention*".

Accordingly, His Lordship Ismail J. sitting in the Court of Appeal (as HL then was) has allowed a Registered Trade Union (TU) and a Dental Surgeon to intervene in the Writ application filed by another TU and three of its members. It was also cited observations made by HL Wanasundara J., in the case of *Jayanetti v. Land Reform Commission* - SC (1984) 2 SLR. 172 at page 179, wherein following observations regarding the Rules in dealing with addition of parties in a FR application.

"*As far as the rule go, it would appear that they deal with the bare skeleton of a procedure relating to a proceeding under Article 126. Part VI of the Rules which deals with these procedural matters consists of only four Rules, i.e. Rules 63-66. It is inconceivable that these four rules are comprehensive and all-embracing and can provide for every situation that could arise in the exercise of our jurisdiction under Article 126. Incidentally, even the Civil Procedure Code with more than 800 sections is said not to be exhaustive*."

It was further observed,

"*This is an extensive jurisdiction and it carries with it all implied powers that are necessary to give effect and expression to our jurisdiction. We would include within our jurisdiction, inter alia, the power to make iterim orders and to add persons without whose presence questions in issue cannot be completely and effectually decided*".

(2) In *Jayawardena v. Ministry of Health and Others* - CA Writ Application No. 978/2008, decided on 21.05.09, the Court allowed the intervention sought on the following basis: "What the court at this point of time needs to consider is whether the intervenient party is a **necessary party** and having such party in the case would in all circumstances **assist court in considering the merit and demerits of the application before court**".

(3) In *Indrani Dewalage Ranasinghe and Others vs. Commissioner General of* (CA writ Application No. 127/10 decided on 11.05.2011) where the court allowed Ceylon Tobacco Company and two other parties who sought to

intervene in an application challenging the tax imposed on white beedi intervene into the said proceedings. In allowing the intervention court observed that; "*There is a specific rule of law in the court of appeal rules in Sri Lanka which governs the issue of intervention applications by third parties in Writ applications. However, our courts have considered the issue of* ***sufficient cause and interest of affected parties*** *in exercising the inherent and discretionary power of the court to allow the intervention applications*".

(4) In *Porakara Mudiyanselage Aruna Samatha Kumara v. T.A.C.N. Thalangama, Returning Officer, Gampola Urban Council* (CA Writ Application No. 238/2020, Court of Appeal minutes dated 21.05.2021) HL Arjuna Obeysekera J., sitting in the Court of Appeal (as HL then was) answered the above question in a progressive manner cited the observations made by HL Janak de Silva J., in the case of *Hatton National Bank PLC v. Commissioner General of Labour and Others* (CA Writ No. 457/2011, CA minute dated 31.01.2020) wherein it was observed, "the rule is that all those who would be affected by the outcome of an application should be made Respondents to such applications".

13. Accordingly, the central and determinant consideration deducible is whether the proposed intervenient has demonstrated a sufficient interest in the subject matter of the application. "Sufficient interest" in this context denotes more than a remote, academic, or purely economic concern. It contemplates a real, substantial, and proximate interest one that is capable of being affected, directly or indirectly, by the outcome of the proceedings. The inquiry is therefore qualitative rather than technical.

14. The concept is intentionally flexible. It is not confined to parties who possess a separate cause of action, nor limited to those who could have independently invoked the writ jurisdiction. Rather, it extends to persons or bodies whose legal rights, duties, liabilities or legitimate interests stand to be impacted by the Court's determination. The requirement is satisfied where the applicant demonstrates a bona fide stake in the issues that is neither speculative nor merely peripheral.

15. In this regard, a distinction which can be drawn in the jurisprudence is between a party with a genuine and identifiable interest and a "meddlesome interloper" who seeks to intrude without any legitimate connection to the dispute. Once it is shown that the applicant falls within the former category and that his or her participation would contribute to a complete and effectual adjudication, the threshold of sufficient interest is met. No higher or more exacting standard is contemplated.

16. Thus, the emphasis remains on substance over form. The Court's discretion is engaged where there exists a credible nexus between the Intervenient and the subject matter of the proceedings. Where such nexus is established, intervention is justified in order to ensure that all materially affected interests are represented and that the matter is resolved in a comprehensive and principled manner.

17. When the instant case is concerned, the outcome in the main application, if the orders are granted or not granted, would have a direct and operative bearing upon intervenient-petitioners' rights and obligations. In such circumstances, their presence is necessary to ensure that any order ultimately made is not only effective in form, but just and

sustainable in substance. Their participation would enable this Court to have the benefit of all relevant facts, perspectives and legal submissions before rendering a final determination.

18. Moreover, the principle of *audi alteram partem*, which is at the very foundation of our system of justice, mandates that no person should be adversely affected by a judicial pronouncement without being afforded a reasonable opportunity of being heard. Where a party is likely to be vitally affected by the outcome of proceedings, the denial of such opportunity would run counter to the fundamental requirements of fairness and natural justice.

19. It was the Intervenient Petitioners' position that the questions raised in the main application transcend the individual grievance of a single officer. It was contended that they concern the manner in which high public office within a vital State institution like the SLPA is filled, the stability and continuity of public administration, the protection of legitimate expectations created by established administrative frameworks, and the reservations of a politically neutral and professionally governed Ports Authority.

20. **There being no rule permitting intervention:**

Furthermore, it has been argued that there is no rule permitting intervention. In this regard it is pertinent to note that there are instances where the courts have decided that it is not mandatory to follow a rule even when a rule exists.

21. In <u>*Kiriwanthe and another vs. Nawarathne and another*</u>, 1989, A. de Z. Gunewardane J., in the Court of Appeal dismissed a revision application on the basis of preliminary

objections, one objection being that there is no compliance with Rule No. 46 of the Supreme Court. The court held that, *"that the observance of Rule 46 is mandatory and the failure on the part of the petitioners to comply with the said Rule is a fatal irregularity, which would disable the petitioners from maintaining this application".*

22. But in the Supreme Court, in *Kiriwanthe and another vs. Nawarathne and another*, 1990, Mark Fernando J., (with the concurrence of Kulathunga J. and Deeraratne J.) changed this decision. Fernando J., held, *"The consequence of noncompliance (by reason of impossibility or for any other reason) is a matter falling within the discretion of the Court, to be exercised after considering the nature of the default, as well as the excuse or explanation therefor, in the context of the object of the particular Rule.".* His Lordship decided, "For these reasons, I allow the appeal, and set aside the judgment and order of the Court of Appeal, with costs in a sum of Rs. 2,500 payable by the 2nd Respondent to the Petitioners-Appellants. The Court of Appeal is directed to hear and determine the Petitioners" application on the merits."

23. In *Hurro Chunder Chowdrey et al vs. Schoorodhonee Debia* (1868) 9 W.R. 402 at 408 it was decided that, *"Since laws are general rules they cannot regulate for all the time to come so as to make express provisions against all the cases that may possibly happen. It is the duty of a law gives to foresee only the most natural and ordinary events and to form his disposition in such a manner as that without entering into the detail of singular cases he may establish rules common to them all and it is the duty of judges to apply the law not only to what appears to be regulated by their express dispositions but to all the cases to which a just application of them may be made and which appears to be comprehended either within the express sense of the law, or within the consequence that may be gathered from it".*

24. **Whether it will open the floodgates:**

His Lordship "Tambiah J., observed in M.D. Chandrasena and two others vs. S.F. de Silva 63 NLR 143, at page 144, that his reluctance to allow the application for intervention was also for the reason *"that the recognition of such a principle would open the floodgates, as it were, to a torrent of similar applications and thus impede the functioning of the Courts"*.

Wade in *Administrative Law*, 06th Edition, page 689 has aptly stated,

*"Judges have in the past had instinctive reluctance to relax the rules about standing. They fear that they may "open the floodgates" so that courts will be swamped with litigation…. **But recently these instincts have been giving way before the feeling that the law must somehow find a place for the disinterested**, or less directly interested citizen in order to prevent illegalities in government which otherwise no one would be competent to challenge."* (the emphasis was added)

CONCLUSION:

25. In the circumstances, it is apparent that issues before this Court concern the governance, independence, and continuity of leadership within the SLPA and a liberal and purposive approach to intervention is warranted and consistent with established authority.

26. Thus, it is my considered view that the Intervenient-Petitioners have satisfied the threshold of "sufficient interest" and the nexus between the Petitioners and the subject

matter is clear and substantial. Accordingly, I am inclined to allow both applications pertaining to intervention. As such, I direct the Petitioner to file Amended Caption.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal